Planning Inspectorate

The Planning Act 2008

The Great North Road Solar and Biodiversity Park

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

Andrea Mageean BA(Hons) BPl., MRTPI, PhD, (Lead Member)

Graham Hobbins MEng, CEng, MICE

Philip Brewer BSc (Hons), PhD, MIOA

28 July 2026

OVERVIEW AND SUMMARY

Application Information Details	
Planning Inspectorate file ref	EN010162
Application dated	27 June 2025
Planning Inspectorate received date	27 June 2025
Applicant name	Elements Green Trent Limited
Accepted for examination	22 July 2025
Examination started	26 November 2025
Examination closed	28 April 2026
Relevant Secretary of State	Secretary of State for Energy Security and Net Zero
Report submitted	28 July 2026

The proposed development includes a ground mounted solar photovoltaic electricity generating station with a gross electrical output exceeding 50 megawatts, a battery energy storage system, and a connection to the National Electricity Transmission System.

The connection agreement would allow for an 800 megawatt connection at the existing Staythorpe substation. The Order would have an area of approximately 1765 hectares of mainly agricultural land to the north-east of Newark-on-Trent in Nottinghamshire.

SUMMARY OF RECOMMENDATION

The Examining Authority recommends that the Secretary of State should make the Order in the form attached, subject to the considerations identified in the final conclusions.

REPORT TABLE OF CONTENTS

1. INTRODUCTION 1
- 1.1. BACKGROUND TO THE EXAMINATION 1
- 1.2. APPOINTMENT OF THE EXAMINING AUTHORITY 1
- 1.3. THE APPLICATION 1
- 1.4. CHANGES TO THE APPLICATION 4
- 1.5. INITIAL ASSESSMENT OF PRINCIPAL ISSUES 4
- 1.6. THE EXAMINATION 5
- 1.7. UNDERTAKINGS, OBLIGATIONS, AGREEMENTS AND CONSENTS 6

2. HOW THE APPLICATION IS DETERMINED 8
- 2.1. INTRODUCTION 8
- 2.2. LEGISLATION AND POLICY 8
- 2.3. NATIONAL POLICY STATEMENTS 9
- 2.4. LOCAL IMPACT REPORTS 10
- 2.5. ENVIRONMENTAL IMPACT ASSESSMENT 10
- 2.6. HABITATS REGULATIONS ASSESSMENT 10
- 2.7. TRANSBOUNDARY EFFECTS 11

3. THE PLANNING ISSUES 12
- 3.1. INTRODUCTION 12
- 3.2. NEED AND ALTERNATIVES 14
- 3.3. SITE SELECTION AND GOOD DESIGN 23
- 3.4. AGRICULTURAL LAND 37
- 3.5. BIODIVERSITY AND ECOLOGY 53
- 3.6. CLIMATE CHANGE 68
- 3.7. CULTURAL HERITAGE AND ARCHAEOLOGY 74
- 3.8. CUMULATIVE AND INTER-RELATED EFFECTS 93
- 3.9. GROUND CONDITIONS AND LAND CONTAMINATION 99
- 3.10. LANDSCAPE AND VISUAL 105
- 3.11. NOISE AND VIBRATION 134
- 3.12. RECREATION 141
- 3.13. SOCIO-ECONOMICS 148
- 3.14. TRAFFIC AND TRANSPORT 154
- 3.15. WATER ENVIRONMENT AND FLOOD RISK 171
- 3.16. MISCELLANEOUS 185

4. HRA SUMMARY 193
- 4.1. INTRODUCTION 193
- 4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS 195
- 4.3. CONSERVATION OBJECTIVES 197
- 4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEOI) 198
- 4.5. HRA CONCLUSIONS 199

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT 200
- 5.1. INTRODUCTION 200

5.2. SUMMARY OF THE MAIN PLANNING ISSUES 201
5.3. THE OVERALL PLANNING BALANCE 210
5.4. FINDINGS AND CONCLUSIONS 211
6. LAND RIGHTS 212
6.1. INTRODUCTION 212
6.2. THE REQUEST FOR CA AND TP POWERS 212
6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED 213
6.4. THE CA AND TP POWERS SOUGHT 214
6.5. LEGISLATIVE REQUIREMENTS 214
6.6. EXAMINATION OF THE CA AND TP CASE 217
6.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP 220
6.8. STATUTORY UNDERTAKERS 229
6.9. HUMAN RIGHTS ACT 1998 AND EQUALITY ACT 2010 CONSIDERATIONS 234
6.10. CONCLUSIONS 235
7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS 236
7.1. INTRODUCTION 236
7.2. THE ORDER AS APPLIED FOR 236
7.3. CHANGES DURING EXAMINATION 237
7.4. EXA'S CONSIDERATION OF OUTSTANDING DCO MATTERS 241
7.5. EXA'S PROPOSED CHANGES 247
7.6. CONCLUSIONS 248
8. SUMMARY OF FINDINGS AND CONCLUSIONS 249
8.1. INTRODUCTION 249
8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS 249
8.3. MATTERS FOR THE SECRETARY OF STATE 251
8.4. RECOMMENDATION 252

APPENDIX A: THE RECOMMENDED DEVELOPMENT CONSENT ORDER I
APPENDIX B: OTHER LEGISLATION AND POLICIES II
APPENDIX C: ABBREVIATIONS LIST I

LIST OF FIGURES

Figure 1: A map showing the location of the proposed development to the north-west of Newark-on-Trent 2
Figure 2: Illustrative plan of the proposed development 4
Figure 3: GNR design principles 24
Figure 4: Site selection - all criteria 25
Figure 5: Indicative developable areas used for EIA scoping 27

Figure 6: Identified work areas 28
Figure 7: Viewpoint 30(c) photomontage at completion, with intermediate substation 34
Figure 8: Agricultural land classification for the proposed development 38
Figure 9: Ecology and biodiversity study area 54
Figure 10: Extract from landscape masterplan 57
Figure 11: Carlton-on-Trent designated heritage assets 79
Figure 12: Kersall Conservation Area 80
Figure 13: GII* listed Moorhouse Chapel 81
Figure 14: Extract of Figure 5.2 landscape masterplan as it relates to Caunton Lodge Farm 82
Figure 15: Ordnance Survey Historic Map, revised 1958, published 1960 87
Figure 16: Proposed development as it relates to the Airfield 88
Figure 17: Ossington Airfield proposed permissive footpaths 91
Figure 18: Viewpoint 5(A): Baseline photomontage and cumulative wireframe; and photomontage at Year 10 116
Figure 19: Cumulative applications 120
Figure 20: Cumulative Effects with Kelham Solar Farm and SSE BESS 121
Figure 21: Viewpoint 45 (B) at Averham 121
Figure 22: Level of effects on PRoW users after mitigation 123
Figure 23: Route between Moorhouse and Skegby 125
Figure 24: Extract of Figure 5.2 landscape masterplan as it relates to Mainwood Farm 128
Figure 25: Extract of Figure 5.2 landscape masterplan as it relates to Caunton Lodge Farm 129
Figure 26: Extract of Figure 5.2 landscape masterplan as it relates to Beesthorpe Manor Farm 131
Figure 27: The water environment study area 173
Figure 28: Flood zones within the Order limits 175
Figure 29: Location of plots 15/16, 15/17, and 16/1 221

LIST OF TABLES

Table 1: Summary of the principal components of and events around the examination 5

Table 2: ACL results for the proposed development..... 38
Table 3: Framework for the assessment of the significance of effects 75
Table 4: significant construction and early operation effects - landscape receptors 108
Table 5: significant construction and early operation effects - visual receptors 108
Table 6: significant operation and decommissioning effects- landscape receptors 109
Table 7: significant operation and decommissioning effects- visual receptors 109
Table 8: significant after decommissioning effects- visual receptors 110
Table 9: Summary of findings on main planning issues..... 210
Table 10: DCO provisions recommended to be changed 247
Table 11: Matters for the Secretary of State 251

The Planning Inspectorate

ERRATA SHEET – Great North Road Solar and Biodiveristy Park Ref. EN010162

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security and Net Zero, dated 28 July 2026

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

Vol	PDF Page No.	Para	Error	Correction
	80	3.7.30	resolve	resolved
	146	3.12.41	though	through
	183	3.15.76	Due for	Due to
	206	5.2.33	5.2.33 in red	Change to black font

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the application) for the Great North Road Solar and Biodiversity Park (the proposed development), Planning Inspectorate reference EN010162, was submitted by Elements Green Trent Limited (the applicant) to the Inspectorate on 27 June 2025 under section (s)37 of the Planning Act 2008 (PA2008). It was accepted for examination under s55 of the PA2008 on 22 July 2025 [PD-001]. This report sets out the findings, conclusions and recommendations of the Examining Authority (ExA) to the Secretary of State (SoS) for Energy Security and Net Zero.

1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for Levelling Up, Housing and Communities in its decision to accept the application for examination in accordance with s55 of the PA2008 [PD-001].

1.1.3. The proposed development includes a power generating station with a gross electrical output capacity of over 50 megawatts. It falls within s15(2) of the PA2008 and meets the definition of an NSIP set out in s14(1) of the PA2008. In accordance with s31 of the PA2008 the proposed development requires development consent, for which an application must be made under s37 of the 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, for example [APP-001]. The reference numbers are used throughout this report, and hyperlinks are included to allow the reader to access them directly.

1.1.5. This report contains appropriate summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 20 October 2025, Andrea Mageean (Lead Member), Graham Hobbins and Philip Brewer were appointed as the Examining Authority (ExA) for the application under s61 and s65 of the PA2008 [PD-004].

1.3. THE APPLICATION

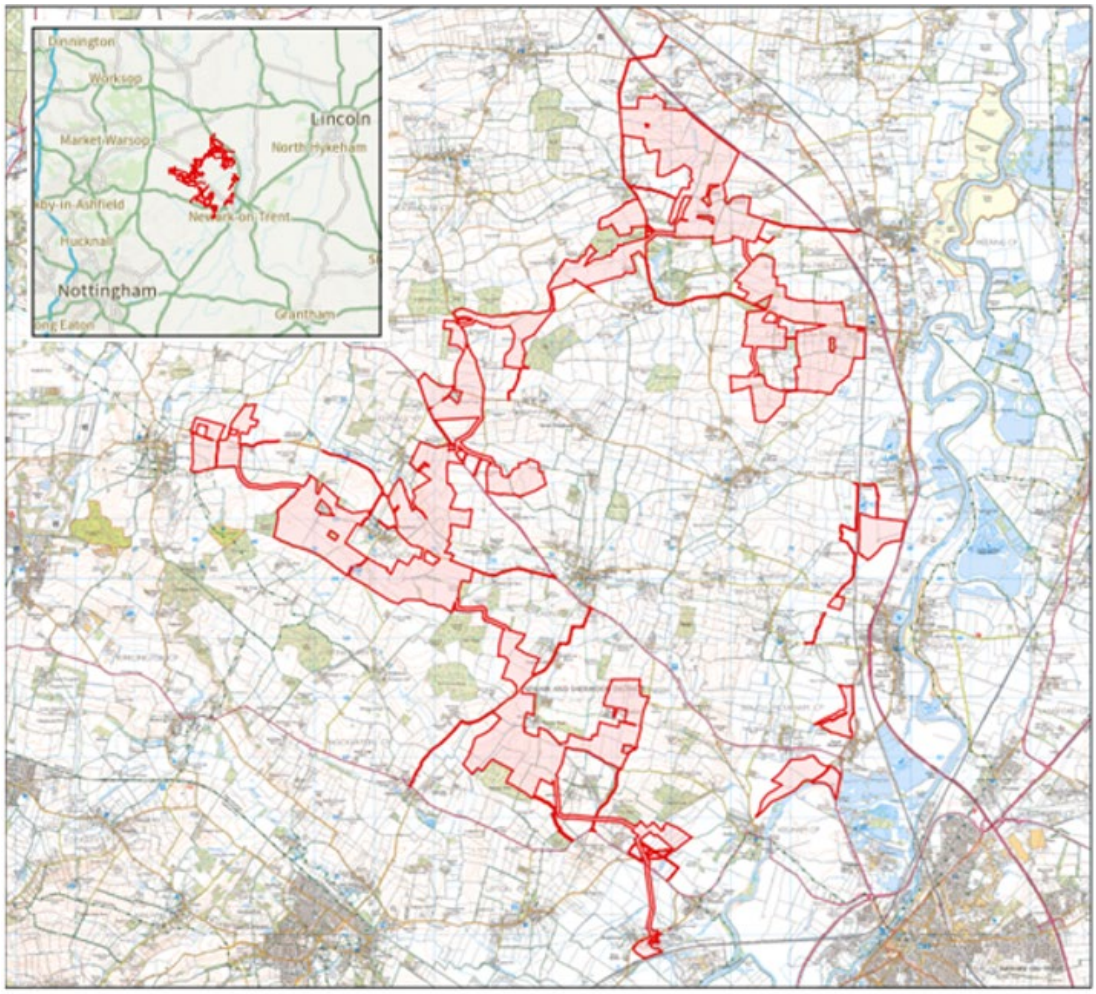
LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the proposed development would be to the north-west of Newark-on-Trent, within the Newark and Sherwood District and Nottinghamshire County Council administrative areas and wholly in England.

The Order limits would be to the west of the A1, north of the A617, east of Eakring, and south of Egmanton, to the north and north-west of Staythorpe.

1.3.2. The location of the proposed development is shown in the Environmental Statement (ES) Development Location [APP-065], as shown in Figure 1 below.

Figure 1: A map showing the location of the proposed development to the north-west of Newark-on-Trent (Order limits shown in shaded red)



Source: Environmental Statement Figure 1.1 Development Location [APP-065]

1.3.3. The total area within Order limits set out in the applicant's Statement of Reasons [APP-010] would be approximately 1,765 hectares (ha), the majority of which is currently used for arable crops or is otherwise down to pasture. This is interspersed with occasional woodland and rural roads and footpaths that connect small villages and hamlets.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.4. Schedule 1 of the draft Development Consent Order (dDCO) [REP6-004] describes the proposed development. The schedule is split into different works numbers (No.) with each representing a different part of the proposed development.

1.3.5. The proposed development can be summarised as:

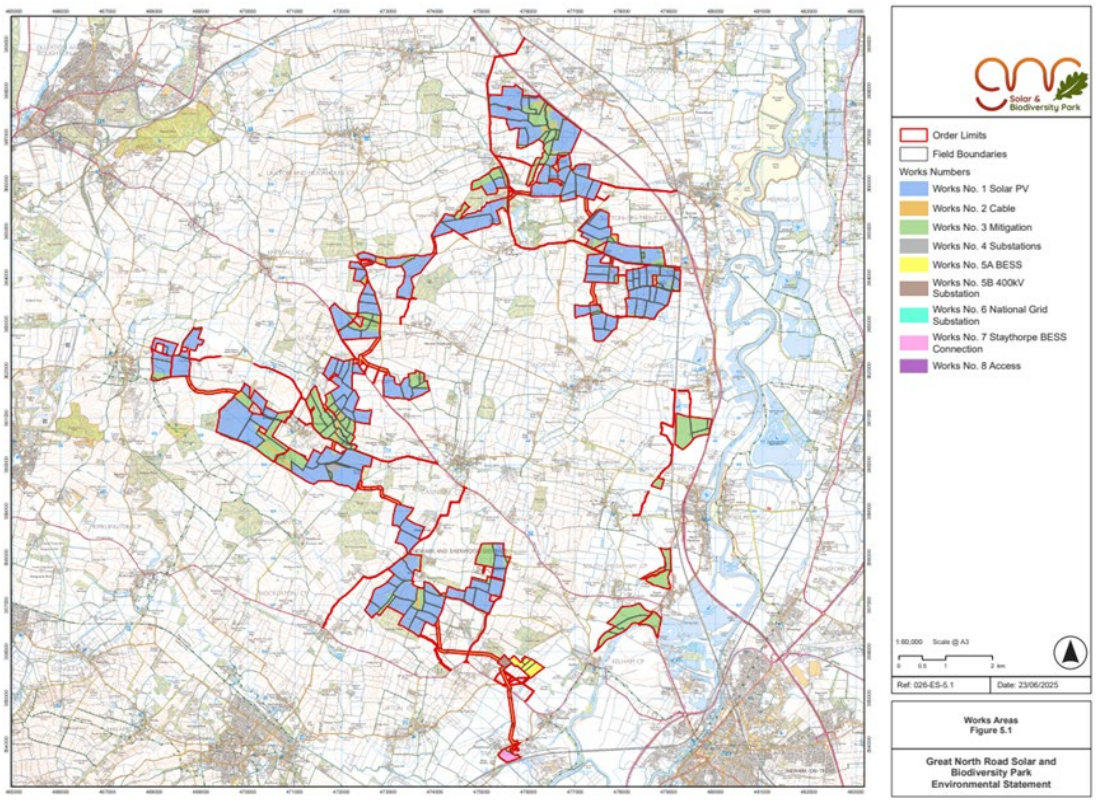
- work no. 1 – a ground mounted solar photovoltaic generating station
- work no. 2 – electrical cable connections
- work no. 3 – green infrastructure
- work no. 4 – intermediate substations
- work no. 5A – a battery energy storage system (BESS)
- work no. 5B – an up to 400kV substation
- work no. 6 – alteration of the existing Staythorpe substation
- work no. 7 – alteration of the consented BESS
- work no. 8 – works to facilitate access to work nos. 1 to 7

1.3.6. A more detailed description of the proposed development is set out in the ES Chapter 5 Development Description [APP-048]. The parameters of the components of the proposed development are set out in the Concept Design Parameters and Principles documents [REP5-030].

1.3.7. In spatial terms the application sets out that of the 1,765 ha within the Order limits, around 1,025 ha would be used for solar panels and other above ground works to provide a gross output of 800 MW [APP-327]. The area of the solar panel photovoltaic (PV) modules themselves would be limited to 550 ha [REP5-030]. The areas not used for solar panels, and the other above ground works would be used for below ground cabling, mitigation and enhancement works.

1.3.8. The illustrative layout of the proposed development is presented in the ES Non-Technical Summary [APP-039] as shown in Figure 2 below.

Figure 2: Illustrative plan of the proposed development



Source: Environmental Statement Figure 1.1 Non-Technical Summary [APP-039]

RELEVANT PLANNING HISTORY

1.3.9. Section 2.4 of the Planning Statement [REP3-018] refers to planning history that would be relevant to the proposed development. It does not identify any specific planning history, other than the consented BESS at Staythorpe.

1.4. CHANGES TO THE APPLICATION

1.4.1. No formal changes to the application were requested by the applicant. General updates to documents and plans were made as the application progressed through the examination and these are identified in the Examination Library.

1.5. INITIAL ASSESSMENT OF PRINCIPAL ISSUES

1.5.1. As required by s88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an initial assessment of principal issues (IAPI) arising from the application in advance of the preliminary meeting (PM). This was based on the application documents and submitted relevant representations. The IAPI can be found in Annex C of 'Rule 6 letter - Notification of the Preliminary Meeting and matters to be discussed' [PD-005].

1.5.2. The issues identified in the IAPI are as follows:

- Agriculture and land use

- Biodiversity, ecology, and the natural environment
- Climate change and sustainability
- Community and human health
- Construction effects
- Cultural heritage and archaeology
- Cumulative Effects
- Landscape and visual impacts
- Need, site selection, and alternatives
- Water environment and flood risks

1.6. THE EXAMINATION

1.6.1. The PM took place on 26 November 2025 [EV2-001]. The ExAs procedural decisions and the examination timetable took full account of matters raised at the PM. They were provided in 'Rule 8 - Notification of timetable for the Examination' [PD-006]. This shows the principal components of and events around the examination and are summarised below.

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

Written questions and requests for information	
The ExA issued written questions (ExQ):	ExQ1 [PD-008] ExQ2 [PD-011]
Hearings	
The ExA held issue specific hearings (ISH):	ISH1 on general and overarching matters [EV3-010] ISH2 on the dDCO [EV5-001] ISH3 on environmental matters [EV7-001]
The ExA held a compulsory acquisition hearing (CAH):	CAH1 [EV6-001]
The ExA held an open floor hearing (OFH):	OFH1 [EV4-005]
Site inspections	
The ExA conducted site inspections:	Unaccompanied site inspection [EV1-001] Unaccompanied and access required site inspections [EV1-002] Unaccompanied site inspection [EV1-003]

PROCEDURAL DECISIONS

1.6.2. Procedural decisions taken by the ExA are recorded in the Examination Library for example [PD-001]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended.

STATEMENTS OF COMMON GROUND

1.6.3. By the close of the examination, the following parties had concluded and signed statements of common ground with the applicant with all matters agreed:

- Historic England [REP6-046]
- Cadent Gas Ltd [REP5-034]
- Nottinghamshire Wildlife Trust [REP5-036]
- National Grid Electricity Distribution (East Midlands) plc [REP6-061]
- Nottinghamshire Fire and Rescue Service [REP6-063]

1.6.4. By the close of the examination, the following parties had concluded and signed statements of common ground with the applicant with matters outstanding:

- Nottinghamshire County Council [REP6-040]
- Newark and Sherwood District Council [REP6-042]
- Environment Agency [REP5-032]
- Natural England [REP6-048]
- National Highways [REP6-044]
- Network Rail Infrastructure Ltd [AS-090]
- Norwell Solar Farm Steering Group [REP5-038]

1.6.5. By the close of the examination, the following parties had not signed statements of common ground with the applicant:

- National Grid Electricity Transmission plc [AS-088]
- RWE Generation UK plc [REP6-050]
- Trent Valley Internal Drainage Board [REP6-049]

1.6.6. The signed statements of common ground have been taken into account by the ExA in all relevant sections of this report. The weight to be afforded to unsigned statements of common ground is considered in the relevant sections of this report.

1.7. UNDERTAKINGS, OBLIGATIONS, AGREEMENTS AND CONSENTS

1.7.1. No agreements have been entered into under s106 of the Town and Country Planning Act 1990 in connection with the proposed development.

1.7.2. The applicant has secured a connection agreement with the National Energy System Operator permitting the export and import of 800 megawatts of electricity via the 400kV Staythorpe substation [REP1-048].

1.7.3. The applicant describes the other statutory consents and licenses that may be required to construct, operate, maintain and decommission the proposed development [REP1-044].

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This section identifies the key legislation, policy and local impact reports (LIR) that the findings, conclusions and recommendations of the Examining Authority (ExA) have been made against.

2.2. LEGISLATION AND POLICY

PLANNING ACT 2008 (PA2008)

2.2.1. The Planning Act (PA2008) section (s)104 provides the basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant national policy statement (NPS) is designated and has effect. Where this is not the case s105 provides the basis for decision-making.

2.2.2. The proposed development includes a solar photovoltaic electricity generating station, a battery energy storage system and a grid connection. It is considered against the PA2008 s104 because it is within the scope of more than one NPS.

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

- any relevant NPS
- any duly submitted LIRs
- any matters prescribed in relation to the development
- any other matters the SoS thinks are both important and relevant to the decision

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

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

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

OTHER LEGISLATION

2.2.6. A list of relevant legislation, including duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008, can be found in table 1 of Appendix B of this recommendation report. The ExA has considered all applicable legislation as required and its findings and recommendations are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

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

- Overarching National Policy Statement for Energy (January 2024) (EN-1)
- National Policy Statement for Renewable Energy Infrastructure (January 2024) (EN-3)
- National Policy Statement for Electricity Networks (January 2024) (EN-5)

2.3.2. These NPSs form the primary policy context for this examination. This report sets out the ExA's findings, conclusions and recommendation taking these matters into account and applying the approach set out in s104 of the PA2008.

2.3.3. On 6 January 2026 EN-1, EN-3 and EN-5 were replaced by new versions. The updated EN-1 confirms at paragraph 1.6.2 that for any application accepted for examination before the final publication of the approved 2025 amendments, the 2024 suite of NPSs should have effect in accordance with the terms of those NPSs. However, paragraph 1.6.3 notes that "[…] any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process."

2.3.4. The updated NPS are therefore referred to as relevant in this report.

OTHER NATIONAL POLICY

2.3.5. The latest National Planning Policy Framework (NPPF) was published on 12 December 2024 and updated on 7 February 2025. 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.

2.3.6. In accordance with s104(2) of the PA2008, other national policies may be important and relevant matters, and these are introduced as necessary in the relevant sections of this report. Other potentially relevant national policy is identified in table 2 of Appendix B.

2.4. LOCAL IMPACT REPORTS

2.4.1. Two LIRs were submitted into the examination by the following local authorities:

- Newark and Sherwood District Council [REP1-075]
- Nottinghamshire County Council [REP1-078]

2.4.2. The issues raised in these LIRs have been considered through the examination and included in the relevant sections of this report. The SoS must have regard to these LIRs as set out in the PA2008 s104(2)(b).

2.4.3. Amongst other matters, LIRs identify local policies (including those from the development plan) which are capable of being important and relevant considerations under of the PA2008 s104(2)(d). As set out under PA2008 s104(3) 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 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 8 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) [APP-192, APP-193, APP-194, APP-195, APP-196, APP-197].

2.5.3. On 19 December 2023, the Planning Inspectorate provided a scoping opinion [APP-198].

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 summarises the environmental effects for each topic.

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 (the 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 likely significant effect on European sites and hence is subject to a habitats regulations assessment. This is considered further in chapter 4 of this report.

2.7. TRANSBOUNDARY EFFECTS

2.7.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 19 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 [APP-198].

2.7.2. A second screening was published on 31 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 [OD-002].

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, on the basis of the information provided by the applicant and Natural England's agreement that the correct sites had been considered in the HRA [APP-316], that the proposed development would not have an LSE on European sites in any EEA member states.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This section sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. It is structured firstly to examine preliminary matters relating to need and alternatives and site selection and design. These are followed by generic topic headings which are arranged in alphabetical order. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA sets out a summary of the application as made and then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects weigh for or against the making of the Order on the following scale:

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

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

3.1.4. The ExA's conclusions take account of all relevant legislation and policy, and of all written and oral submissions. The focus is on matters the ExA consider to be important and relevant to the decision. This does not necessarily include matters that are not controversial, are agreed between the parties, or are adequately justified by the applicant.

THE PLANNING ISSUES IN THIS REPORT

3.1.5. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the initial assessment of principal issues 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 recommendation report. 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 the sections below.

3.1.6. The planning issues considered in this recommendation are as follows:

- section 3.2 Need and alternatives
- section 3.3 Site selection and design
- section 3.4 Agricultural land
- section 3.5 Biodiversity and ecology
- section 3.6 Climate change
- section 3.7 Cultural heritage and archaeology
- section 3.8 Cumulative effects

- section 3.9 Ground conditions and land contamination
- section 3.10 Landscape and visual
- section 3.11 Noise and vibration
- section 3.12 Recreation
- section 3.13 Socioeconomics and tourism
- section 3.14 Traffic and Transport
- section 3.15 Water environment and flood risks
- section 3.16 Miscellaneous

3.2. NEED AND ALTERNATIVES

INTRODUCTION

3.2.1. This section considers the overarching need for the proposed development and the approach to alternatives. Later sections of this recommendation report address site selection and design (3.3) and climate change (3.6), including greenhouse gas emissions.

3.2.2. In considering matters relating to need and alternatives, the Examining Authority (ExA) has had regard to:

- the overarching National Policy Statement (NPS) for Energy (EN-1), particularly the relevant paragraphs of section 3 ‘The need for new nationally significant infrastructure projects and section 4 ‘Assessment principles'
- the NPS for Renewable Energy (EN-3)
- the NPS for Electricity Networks Infrastructure (EN-5)
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

3.2.3. The applicant sets out the need for the proposed development in section 5 of the Planning Statement, drawing on the national and local policy support for new renewable energy [REP3-018]. This sets out the role of large-scale solar projects in meeting the three national energy policy aims of decarbonisation, security of supply and affordability.

3.2.4. Further detail is set out in the Statement of Need [APP-324] which explains more specifically the strategic need for renewable energy generation and storage and how this is embedded in legislation and national policy. It also explains how the proposed development would be deployed to contribute to meeting this need.

3.2.5. In summary the applicant sets out the case for solar generation and the proposed development in terms of:

- the pressing need for renewable energy delivery at an accelerated pace, as highlighted in ‘The Challenge’ section of the Government’s Clean Power 2030 Action Plan
- the fact that large scale solar projects such as the proposed development are required in addition to other technologies to diversify the UK’s low-carbon portfolio to meet its legal obligations to achieve net zero by 2050
- the acknowledgment in current policy that there will be limited opportunities to deliver large scale solar development, due to grid connection and locational constraints
- the fact that the proposed development would make good use of existing infrastructure capacity at the Staythorpe Substation

- the expectation that the proposed development would have a generating capacity of around 800 megawatts (MW), which is equivalent to providing the electricity requirements of up to 400,000 homes, thereby making a significant contribution to meeting urgent need
- the forecast that the proposed development would result in a net reduction in CO2, helping contribute to the UKs Net Zero targets
- the provision of an additional source of domestic energy security that would reduce the market price of electricity because more expensive and more carbon intensive generation (such as gas) would not be required to generate as much, thereby reducing the overall cost of electricity to consumers
- the proposed development being capable of being implemented promptly and once operational actively contributing to the ambitious renewable energy generation targets set out in the Clean Power 2030 Action Plan
- there being no known site constraints which would prohibit or delay delivery

3.2.6. The applicant also sets out the need case for energy storage and this element of the proposed development in terms of:

- the role of the battery energy storage system (BESS) in maximising the usable output from intermittent generation, reducing the total amount of generation capacity required in the system, and providing the opportunity to deliver grid balancing to the local electricity network
- the need to provide stability of supply to support renewable energy generation, noting that the Government's Clean Power 2030 Action Plan confirms that a very significant level of increase of energy storage capacity is required by 2030
- the BESS having a direct relationship with the principal development and being proportionate to the nature and scale of the development. It would be located towards the southernmost part of the Order limits close to both the source of the energy being generated, and the Staythorpe Substation, in order to provide operational effectiveness and efficiency

3.2.7. The reasonable alternatives considered by the applicant are set out in chapter 4 of the Environmental Statement (ES) [APP-047]. These include the following, along with the applicant's reasoning:

- the do-nothing scenario: this is not considered to be a reasonable alternative as it would not deliver the additional electricity generation and energy storage proposed
- alternative locations for the grid connection point: other grid connection locations with similar export capacity potential would be considered as additional development opportunities, rather than as alternatives
- alternative technologies:
    - nuclear development: discounted on the basis of the lengthy planning and development timeframes
    - hydroelectric generation: not feasible as this area does not have the potential to raise or hold a large volume of water to an appreciable

height as required to generate the kinetic energy required to drive turbines
    - wind turbines: insufficient landscape capacity and space between residential properties to accommodate the turbines whilst meeting relevant guidelines and standards

- smaller solar park: a substantially smaller solar park would not be financially viable with this grid connection, nor would it deliver the same energy benefits as the larger scheme proposed

ISSUES CONSIDERED DURING THE EXAMINATION

3.2.8. The main issues considered in the examination related to:

- the need for the proposed development and its energy generating capacity
- whether the provision of the BESS has been justified
- whether reasonable alternatives have been considered
- the application of relevant local policy provisions

The need for the proposed development and its generating capacity

3.2.9. Whilst in general terms the need for renewable energy sources was not disputed, interested parties (IP) did question whether the specific circumstances of the proposed development had been adequately justified.

3.2.10. A number of IPs challenged the applicant's forecasts relating to the number of homes the proposed development would supply with renewable energy, noting that this appears to be out of step with other local nationally significant infrastructure projects (NSIP) [RR-169, RR-174, RR-101]. This matter was discussed in issue specific hearing (ISH1) [EV3-001, EV3-003]. In response to the queries raised, the applicant produced a technical note explaining the basis of the calculations, and that the proposed development would generate annually an amount of electrical energy equivalent to the electrical consumption of around 400,000 homes [REP1-068] appendix 1.

3.2.11. In response to further representations from the Joint Parishes Action Group (JPAG) on this point, [REP2-130], the applicant explained that the homes-equivalent figure for this proposed development would be different from other solar NSIP schemes due to the differences in project design. Specifically, the calculations reflect a range of assumptions including the overplanting ratio, grid export capacity, the yield and extent of panel-to-panel shading and the type of solar photo-voltaic (PV) modules used, all of which will vary between projects [REP3-098].

3.2.12. JPAG maintained their position on this at the end of the examination, noting that using different consumption figures the number of homes supplied would range from 153,405 homes to 272,720 homes. JPAG also cited the recent approval of the Springwell Solar development which also proposes 800MW of output but only claims to power 180,000 homes, suggesting that this indicates an exaggeration of the benefits associated with the proposed development [REP6-072].

3.2.13. IPs also contended that the applicant's position was that granting consent for the proposed development would lead to a reduction in the market price of electricity. They challenged this, noting the role of market factors and the intermittency of solar generation creating uncertainty around the capacity of the proposed development, particularly during winter months [REP2-130, REP2-138].

3.2.14. The applicant clarified that it was not their case that the proposed development would directly reduce electricity bills for individual consumers, noting that electricity pricing sits outside the scope of the application. The applicant also referred to the need to view the role of solar generation at a system-wide level, and over an annual cycle, rather than focusing on winter month examples. Solar generation remains essential to reducing long-term reliance on fossil fuels and increasing energy security, and the proposed development would contribute to that strategic national objective [REP3-098].

ExA's consideration

3.2.15. As set out in EN-1 paragraphs 3.2.6 and 3.2.7, the starting point for the consideration of such applications is that the Government has identified a need for this type of infrastructure which is urgent and which must be delivered at scale and speed. The ExA recognises that IPs have challenged the suggested energy generating capacity of the proposed development, and that there may be some uncertainties around this. Nonetheless, in the circumstances of national policy priorities, even if the lower projections of IPs were accepted, this would still represent a significant amount of energy from a renewable source.

Whether the provision of the BESS has been justified

3.2.16. At the start of the examination IPs questioned the need for the BESS, noting the applicant's justification that it would contribute to overall net zero targets by assisting in the reduction in the use of fossil fuels and that it is required to cope with potential excess generation by the solar arrays. They challenged these points on the basis of there already being two approved BESS developments in the immediate locality, including one that is designed to link up to this proposed development [RR-136, RR-163, RR-164]. On the other hand, some questioned whether there would be sufficient storage capacity to handle the electricity output from existing and under-construction schemes as well as the proposed development [RR-032].

3.2.17. The applicant responded by reiterating the role that energy storage plays in achieving net zero, noting particularly that it provides flexibility to the energy system overall. Reference was also made to the demonstrable unmet need for BESS, as set out in the Clean Power 2030 Action Plan. This sets out that the current installed capacity is 4.5GW, whilst the 'Clean Power Capacity Range' for 2030, that is the range of possible installed capacities anticipated to provide a significant increase in flexibility, is 23-27GW [REP1-065].

3.2.18. The applicant also explained the energy balancing role of the BESS. Whilst the maximum export capacity at the grid connection point is 800MW, the proposed development has been sized to generate 1,120-megawatt peak

(MWp), on the basis of energy generation from solar projects fluctuating throughout the day. The BESS would allow for the capture of surplus energy, allowing for a steady and controlled supply of energy to the grid. It would be sized to deliver grid services to support the safe operation of the grid and would also provide financial returns to ensure that the proposed development is viable [REP1-065].

3.2.19. During ISH1 [EV3-001, EV3-003] the ExA asked the applicant whether the proposed development would be viable without the BESS. The applicant acknowledged that the BESS would have some commercial benefit, but this would be a subordinate component of the development, noting that the inclusion of BESS is directly supported by NPS policy [REP1-068].

3.2.20. The applicant further set out that the need for BESS is so great that all reasonable and feasible opportunities for delivering capacity need to be explored. This means that even with the consented BESS schemes in the local area, including BESS within the proposed development, this remains an important and relevant planning benefit of the proposed development [REP1-068].

3.2.21. The ExA sought to further explore the specific energy balancing role of the proposed BESS in first written questions (ExQ1) Q1.1.8 [PD-008]. In response the applicant set out that the overall power output of the BESS would be 440 MWp. In terms of its storage capacity, it has been assumed that this would be a 2-hour system, storing 880 MWh as a worst-case scenario for the purposes of the Environmental Statement (ES). However, storage capacity could vary depending on the type of technology available and required at the time. This could include long duration energy storage. The ES has assumed a Rochdale Envelope that would allow for a number of alternative BESS configurations, such as a longer duration storage capacity of 4 hours or more [REP2-117].

3.2.22. The applicant also explained that, in addition to storing excess energy from the proposed development or elsewhere, the BESS could also participate in other grid services. The details of the nature of those services are not yet known, as they would depend upon the final design and availability of contracts [REP2-117].

ExA's consideration

3.2.23. The ExA has considered the role of the BESS and notes that both EN-1 and EN-3 are clear that energy storage can play an important role, especially when co-located with other renewable generation. Specifically, paragraphs 3.3.25 and 3.3.26 of EN-1 identify that the energy storage provided by the BESS has a key role to play in achieving net zero, providing flexibility to the energy system, to reduce costs and increase reliability. The inclusion of the BESS as part of the proposed development provides an opportunity to integrate low carbon energy generation and storage.

3.2.24. The ExA's view is therefore that, whilst other BESS facilities are in development locally, this does not undermine the case for the proposed BESS which is considered to be proportionate to the proposed development.

Whether reasonable alternatives have been considered

3.2.25. Noting the large scale of the proposed development and raising concerns about it being disproportionate to host communities, IPs questioned the extent to which a smaller solar park had been considered [RR-025, RR-163, RR-164, RR-169 RR-174, RR-101, REP3-111, REP4-074].

3.2.26. As a starting point, the applicant referred to EN-1 and EN-3 in establishing the need for the delivery of a large amount of solar generation capacity. The applicant also stated that the site capacity of the proposed development is in accordance with EN-3 and national policy more widely, noting that based on an installed DC capacity of approximately 1,120 MW, this equates to approximately 3.9 acres for each MW of output. In this sense the size of the proposed development would be in line with paragraph 2.10.17 of EN-3 which states that, along with associated infrastructure, a solar farm requires between 2 to 4 acres for each MW of output [REP1-065].

3.2.27. More generally, in terms of community impacts, the applicant referred to the design process having taken account of the context and features of the land, nearby sensitive receptors and assets, environmental surveys, feedback from stakeholders, opportunities and constraints. They sought to balance the need to maximise the energy generation capacity with the avoidance and mitigation of effects [REP1-065].

3.2.28. During ISH1 [EV3-001, EV3-003] the ExA sought to clarify the reference in ES Chapter 4 Alternatives [APP-047] to the suggestion that a substantially smaller solar park would not be financially viable with this grid connection. The applicant noted that there was a clear policy directive to optimise the use of grid connections which are in short supply. The applicant's position was that identifying a large site was an appropriate response to policy, recognising that they would need to demonstrate that the environmental impacts of a larger scheme would be acceptable as part of the application process [REP1-068].

3.2.29. IPs also referred to the need to explore alternative means of generating solar energy, specifically rooftop solar and the greater use of brownfield land [RR-038, RR-132, RR-165, RR-183, REP1-087, REP1-095, REP1-127].

3.2.30. The applicant's position was that all reasonable alternatives had been considered, as set out in ES Chapter 4 Alternatives [APP-047]. More specifically the applicant referred to the important role that solar needs to play in delivering the government's goals for greater energy independence. Rooftop and brownfield solar options are insufficient in scale and pace, nor would they be at a cost which would viably meet national targets. The applicant also noted that there is no policy requirement to consider alternatives such as roof-mounted solar or other options [REP1-065]. Further, the applicant also pointed to the recent reinforcement of the urgent need for

significant amounts of large scale solar through the publication of the updated NPSs for energy in January 2026 [REP2-116].

3.2.31. Questions were also raised by IPs about whether alternative technologies had been considered as reasonable alternatives to the proposed development, with reference made to carbon capture and storage technology or small modular reactors (SMR) [RR-101].

3.2.32. The applicant referred to EN-1 and EN-3 clearly establishing the need for solar development. The consideration of alternative technologies and design such as SMR, or splitting the proposed development into small projects, is not a relevant policy requirement. Policy requirements relating to the consideration of alternatives are in relation to flood risk, agricultural land, compulsory acquisition, and habitat sites, all of which are considered separately in the ES [REP1-068].

3.2.33. More specifically in response to discussion at ISH1 [EV3-001, EV3-003] on the question of whether nuclear technology would be a reasonable alternative, the applicant accepted that an SMR would be quicker to deliver than a nuclear power station. However, it referred to SMRs being at the research and development phase, with Government continuing to progress work on key policy and market enablers, including finalising regulatory access, siting, and financing for SMRs. The target for deployment of SMRs is the early 2030s. Therefore, this technology would not be able to be deployed fast enough to meet the anticipated 2028 energisation date relating to the proposed development [REP1-068].

ExA's consideration

3.2.34. The ExA is satisfied that the applicant has provided sufficient information in the ES to accord with the EN-1 paragraph 4.3.15 requirement to consider reasonable alternatives to the proposed development, including the reasons for the choices made, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.

3.2.35. Whilst the ExA acknowledges that other forms of low carbon energy infrastructure will be required to meet the net zero target, the proposed development would help deliver a significant amount of more secure energy and could be delivered ahead of other forms of low carbon generation. Moreover, the applicant has demonstrated a reasonable approach to balancing the need to maximise grid capacity whilst also making the most efficient use of land and avoiding unacceptable impacts. That said, the nature and extent of the impacts identified will be considered in forthcoming sections of this recommendation report.

3.2.36. The application of relevant local policy provisions

An area of disagreement between the applicant and Newark and Sherwood District Council (NSDC) related to the suggested tension between national and local policy. NSDC referred to the Policy Compliance Document [APP-

318], suggesting that local policies are considered only in brief and that the Planning Statement does not provide an appraisal of relevant policies [RR-156]. This disagreement remained at the end of the examination [REP6-042].

3.2.37. Specific reference was made in the LIR to the Newark and Sherwood Amended Core Strategy (2019)(Core Strategy) Core Policy 10, which refers to the commitment to tackling the causes and impacts of climate change and to delivering a reduction in the District's carbon footprint. This includes promoting energy generation from renewable and low-carbon sources where the adverse impacts have been satisfactorily addressed. Core Policy 10 also refers to the Local Development Framework – Allocations and Development Management DPD (2013) (the ADMDPD) Policy DM4 'Renewable and Low Carbon Energy Generation', which provides the framework against which the appropriateness of proposals will be assessed [REP1-075].

3.2.38. Policy DM4 then sets out that planning permission will be granted for low carbon energy generation development, where its benefits are not outweighed by detrimental impacts upon a range of elements including landscape character, heritage assets, highway safety, ecology and aviation interests of local or national importance. A review of the ADMDPD is currently in examination with consultation on main modifications having taken place in September/ October 2025. The review is seeking to carry forward the main provisions of Policy DM4, supporting low energy carbon developments where benefits are not outweighed by detrimental impacts, which continues to include those issues identified within the current version of Policy DM4 [REP1-075].

3.2.39. The applicant's Planning Statement [REP3-018] sets out that both Core Policy 10 and Policy DM4 relate to planning applications rather than development consent applications for NSIPs. They set out that, in accordance with paragraph 4.1.15 of EN-1, where there is a conflict between a local plan and an NPS, then the NPS prevails for the purpose of Secretary of State (SoS) decision making, given the national significance of the infrastructure.

ExA's consideration

3.2.40. The ExA agrees with the applicant's assessment, noting the provisions of EN-1 that in the event of conflict the NPS prevails. The relevance of this point will be considered further in the final planning balance in chapter 5 of this recommendation report.

3.2.41. More generally, the ExA recognises that local policy provisions can be important and relevant to the SoS decision making process. Therefore, where relevant to the topic, they are referred to in forthcoming sections of this recommendation report.

CONCLUSIONS

3.2.42. The urgent need for solar generation is established by EN-1 and EN-3. The proposed development would contribute towards meeting this need, would help in the transition to a low carbon system, would contribute to a more

secure energy system and would generally be in accordance with EN-1, EN-3 and EN-5. It would also be in general accordance with the National Planning Policy Framework (NPPF) and local policy, all of which give support for the principle of low carbon generation.

3.2.43. The role of the BESS in supporting energy balancing and optimising grid capacity and capability, thereby increasing reliability and reducing costs, is recognised and supported by the NPS.

3.2.44. In terms of the consideration of alternatives, the ExA is satisfied that the application contains sufficient detail, including the approach to the grid connection, the scale of the proposed development and different technologies, to meet the requirements of the NPSs and the Environmental Impact Assessment (EIA) Regulations.

3.2.45. Summing up, the contribution of the proposed development to meeting the urgent need for a secure supply of renewable energy, thereby supporting the UK's legal obligations to achieve net zero by 2050, carries very great/ substantial weight in favour of making the Order.

3.3. SITE SELECTION AND GOOD DESIGN

INTRODUCTION

3.3.1. This section considers the approach to site selection and good design.

3.3.2. In considering site selection and design matters, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 4.7 'Criteria for good design for Energy Infrastructure'
- the NPS for Renewable Energy (EN-3), in particular section 2.3 'Factors influencing site selection and design' and section 2.5 'Consideration of good design for energy infrastructure'
- the NPS for Electricity Networks Infrastructure (EN-5), in particular sections 2.4 'Consideration of good design for energy infrastructure' and section 2.9 'Applicant assessment'
- the local impact reports (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

3.3.3. The site selection and design evolution processes are set out in the Environmental Statement (ES) Chapter 4: Alternatives [APP-047]. A description of the proposed development, including the approach to the Rochdale Envelope and the design parameters, is set out in Chapter 5 [APP-048], which was updated to revision 2 during the examination [REP5-009]. This aspect of the application is supported by the following documents:

- Design Approach Document [REP2-019]
- Maps and figures [APP-068, APP-069, APP-070, APP-071, APP-072, APP-073, APP-074, APP-075, APP-076, APP-077, APP-078, APP-079]
- Concept Design Parameters and Principles document [REP3-067]

The approach to design

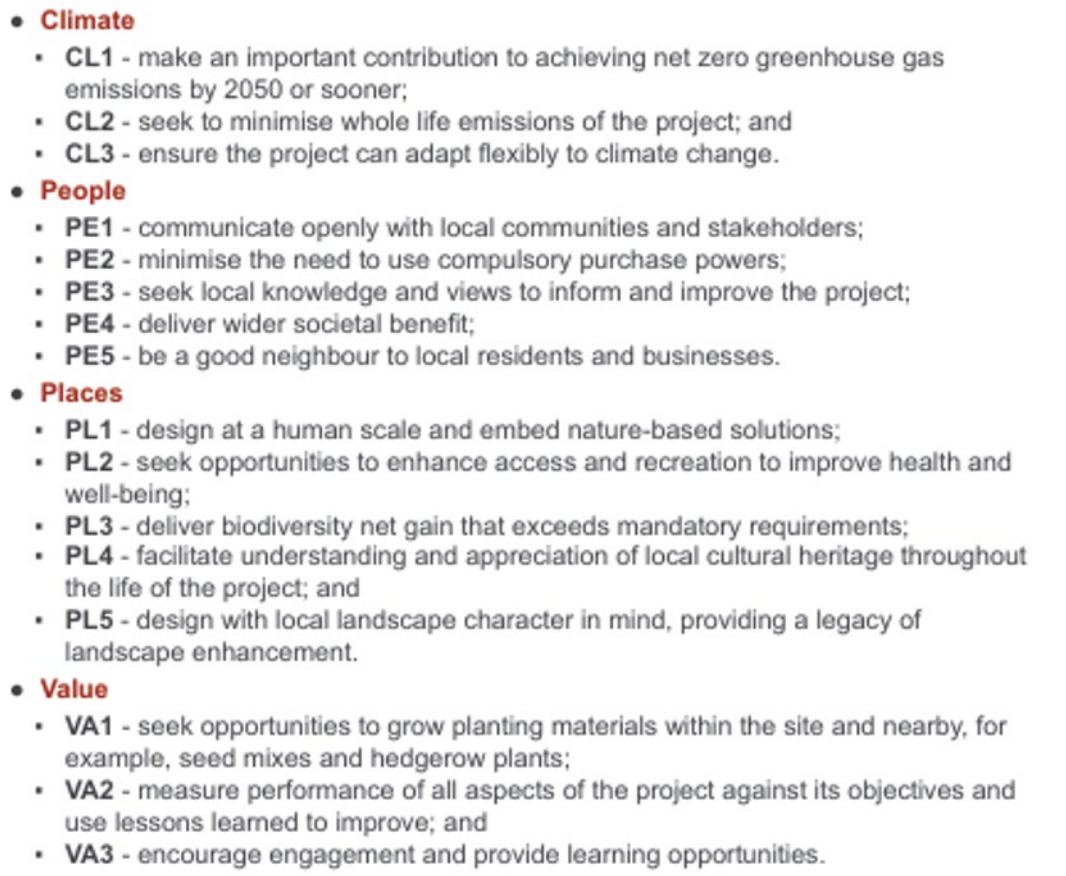
3.3.4. The applicant's Design Approach Document (DAD) [REP2-019] was prepared to describe the design process. It draws together information relating to design matters and explains what physical, environmental, human, technical and commercial factors fed into the overall project design and how they have shaped it. It also sets out the national policy context and guidance that informed the early design of the proposed development.

3.3.5. The DAD sets out that the project design has been guided by overarching design principles for national infrastructure, as set out by the National Infrastructure Commission (NIC). The project specific design principles are included in the DAD under the headings of climate, people, places and value. They are set out in Figure 3.

3.3.6. The DAD describes the design process followed, setting out how design, consultation and the Environmental Impact Assessment (EIA) have

interacted and influenced each other. It describes the key stages where community/ stakeholder consultation and environmental information have fed into the ongoing design process.

Figure 3: GNR design principles



Source: DAD [REP2-019]

Site selection

3.3.7. The ES Chapter 4 Alternatives [APP-047] sets out that in order to deliver the 800 megawatt (MW) (AC) as per the grid connection contract with National Grid Electricity Transmission, the development would need to provide installed DC capacity of approximately 1,120 MW. This is based on a 1.4 ratio for overplanting, with reference to EN-3 which allows for oversizing of a development whereby the installed generating capacity is larger than the generator's grid connection. This maximises energy yield by allowing developers to take account of degradation in panel array efficiency over time.

3.3.8. In 2021 the applicant set a target of securing around 5,000 acres (around 2,000 hectares (ha)) of land for solar photovoltaic (PV) only, based on the assumption at the time of approximately 4.5 acres per 1 MW of solar generation.

3.3.9. The starting point of the site selection process was the acceptance that the proposed development would connect to the National Grid at Staythorpe substation. A site search area of 15km from the substation was identified, with the following specific constraints:

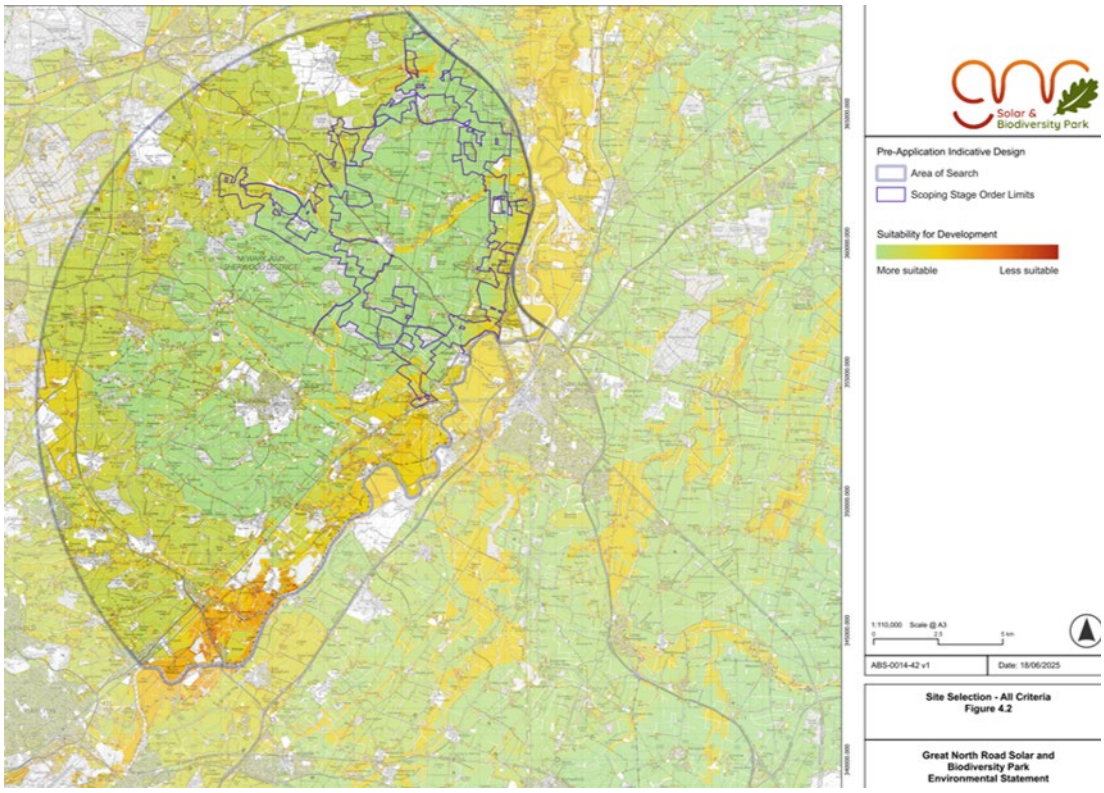
- the area east of the A1 and south and east of the River Trent was not viable due to the costs and environmental factors associated with a major road cable crossing and the additional costs of crossing the River
- the area around Laxton was classified as historic landscape and therefore formed the northern/ north-western limit of the site search area
- areas further to the west are classified as higher-grade agricultural land on the provisional Natural England maps, and therefore avoided from the outset

3.3.10. Once the site search area was defined, a series of environmental factors, physical constraints and developer considerations were defined to inform the site selection process:

- physical constraints: including buildings, woodlands, roads, railways, watercourses, existing power lines and steep slopes
- landscape and visual considerations: including local landscape designations
- heritage considerations: including listed buildings, scheduled monuments, conservation areas and historic parks and gardens
- land use considerations: including parks and recreation areas, allocated development sites, agricultural land classification and green belt
- hydrology, ecology and geology considerations

3.3.11. Figure 4 presents a composite of all of these criteria.

Figure 4: Site selection - all criteria



Source: Figure 4.2 [APP-070]

Identifying potential development areas

3.3.12. The land assembly process involved a combination of the assessment of landholdings introduced to the applicant by land agents and land that the applicant pursued by actively approaching landowners. Starting from the grid connection point at the Staythorpe substation, this favoured lower constraint/ more suitable areas. A stronger preference was placed on land parcels closer to the substation [REP2-019].

3.3.13. As potentially available land was identified, high level technical and environmental reviews were undertaken to establish potential constraints to development. A preference was given to minimising the use of compulsory acquisition powers in securing the land for the development.

3.3.14. Broad development areas required for the solar PV arrays, for the battery energy storage (BESS) and substation compounds, for the underground cables and access and for the mitigation and enhancement areas were identified as a basis for the EIA scoping process (Figure 5).

Design development

3.3.15. By the scoping stage the scheme had evolved into a ring shape. The applicant sets out that the rationale for this shape was to improve the grid connectivity between all fields [APP-047].

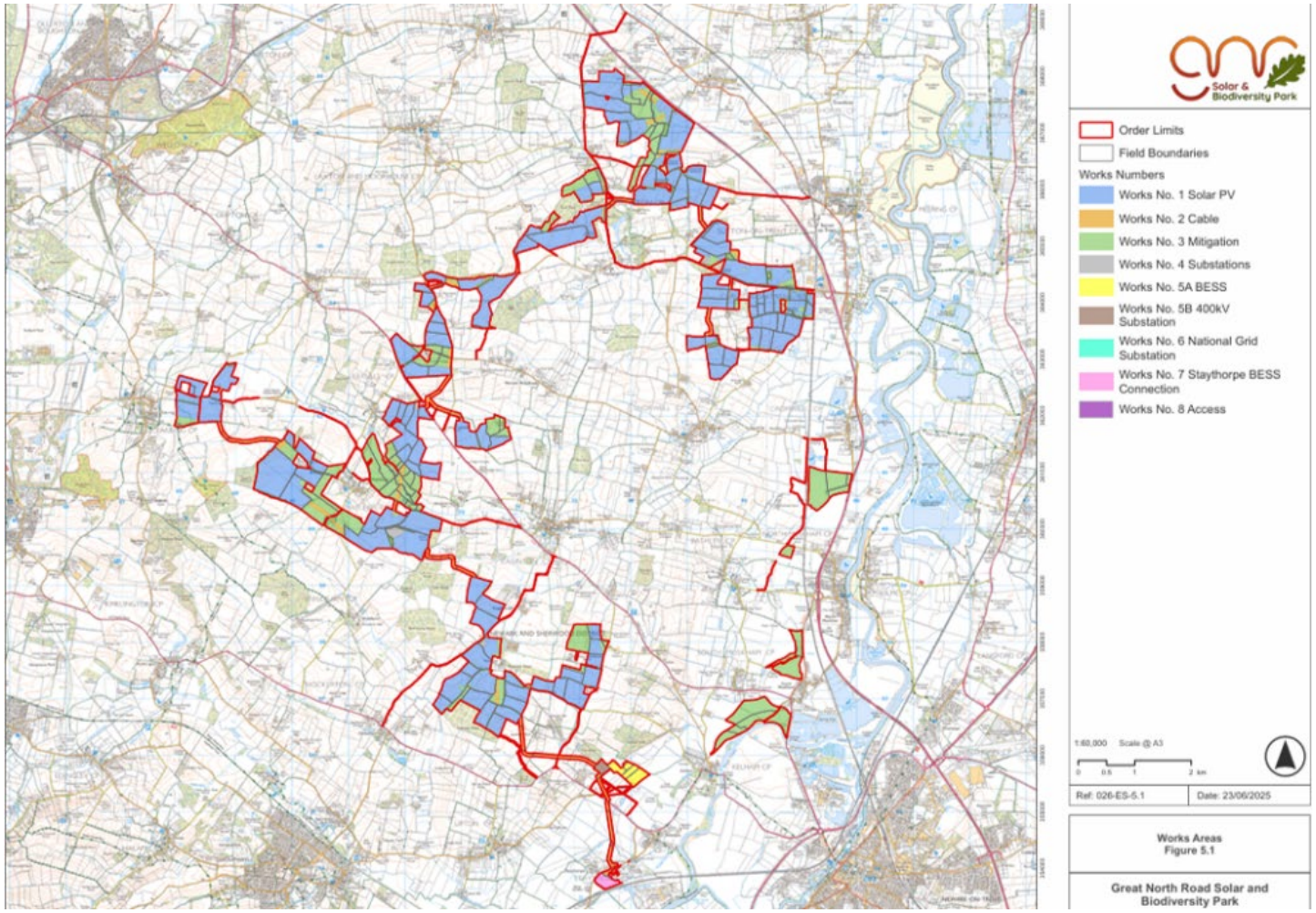
3.3.16. During non-statutory consultation, one of the main issues raised by the public was the potential loss of biodiversity. This prompted further engagement with consultees and stakeholders which led to the concept of a biodiversity park. This was based on combining the ecological benefits that could be derived from the solar PV areas with additional ecological and landscape benefits derived from land procured for this purpose [APP-047].

3.3.17. The changes made included land agreements being altered to allow for the establishment of conservation covenants with landowners, meaning that biodiversity enhancements such as woodland planting and new hedgerows could be secured beyond the life of the solar farm. The applicant also decided to retain land deemed environmentally unsuitable for solar development and put it aside for biodiversity enhancements.

3.3.18. Following non-statutory consultation, design refinements made to address local concerns included setting back array areas and re-positioning substations in visually prominent positions. Further modifications were undertaken in response to new flood data and archaeological investigations. This included the large reduction in the proposed array areas in the south-east quadrant, as well as reductions to the south-east of Moorhouse, west of Cromwell and east of Kersall.

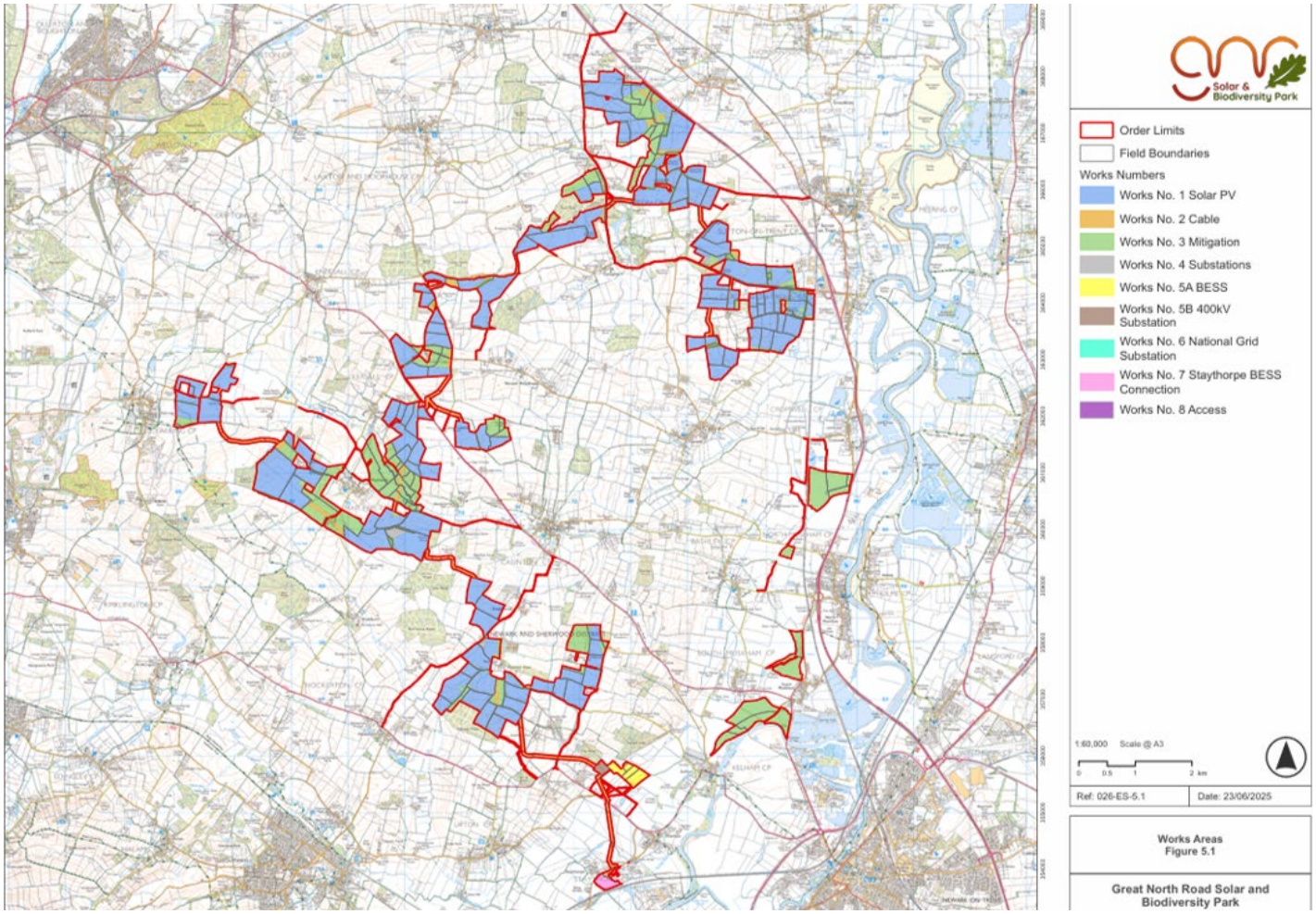
3.3.19. The design features of the application as submitted are set out in the masterplan (Figure 5.2) [APP-081]. The resulting work areas are summarised in Figure 2.2 of the DAD, set out in Figure 6 below.

Figure 5: Indicative developable areas used for EIA scoping



Source: DAD Figure 2.2 [REP2-019]

Figure 6: Identified work areas



Source: Figure 5.1 in the Non-Technical Summary [APP-039]

3.3.20. The applicant acknowledges that the layout is not one area of contiguous fields, but a number of islands of land connected by fields which would be used for underground cabling and biodiversity enhancement. The applicant states that this has been derived from the approach to identifying potentially developable land, which has led to the selection of land that would have a lower overall environmental impact than would be the case if all solar arrays were aggregated together [APP-047].

Design parameters and post consent delivery

3.3.21. The Concept Design Parameters and Principles Document (CDPP) [REP3-067] sets out the design parameters for the components of the proposed development. It is structured to reflect the works areas, and includes key design parameters for their location, scale and detailed design. The extent of these parameters would represent the worst-case scenario assessed in the ES for the proposed development.

3.3.22. The delivery of detailed design matters would be secured through requirement 6 of schedule 2 of the draft Development Consent Order (dDCO) [REP6-004].

ISSUES CONSIDERED IN THE EXAMINATION

3.3.23. The main issues considered in the examination related to:

- whether the spatial consideration of genuine alternatives has been adequately considered and presented
- whether the dispersed configuration of the proposed development has been justified
- the extent to which good design principles have been embedded and how detailed design control would be managed

Whether the spatial consideration of genuine alternatives has been adequately considered and presented

3.3.24. A range of interested parties (IP) raised concerns about the robustness and criteria driving the site selection process. As a general comment, it was suggested that the site selection criteria were not sufficiently tightly defined, with the 15 km search area not justified and the process being heavily driven by willing landowners rather than the availability of suitable sites. IPs also suggested that there is no evidence in the site selection approach to demonstrate that options to avoid best and most versatile (BMV) agricultural land, areas with flood risk, mineral safeguarded areas and impacts on residential amenity were duly considered [RR-101, RR-213, REP3-104].

3.3.25. The applicant considered that a 15 km radius was a reasonable study area from the grid connection for a solar project of this scale. The applicant referred to the iterative design process used to optimise the layout of the proposed development, with the proposed layout in the EIA Scoping Report being refined to avoid high value agricultural land and any landscape designated areas. The applicant also sets out how the relevant policy

considerations relating to flood risk, BMV land, residential amenity and mineral safeguarding have influenced site selection, with reference to paragraphs 2.10.18 to 2.10.48 of EN-3 [REP2-115].

3.3.26. In the ExA's second written questions (ExQ2) Q12.2.2 [PD-011] the ExA asked the applicant to clarify whether the availability of land had been a factor, noting that EN-1 paragraph 4.3.15 states that applicants should give an indication of the main reasons for their choices in terms of the reasonable alternatives studied in the ES. The applicant set out that whilst the design development process had been informed by a range of factors, the availability of land as an alternative to the exercise of compulsory acquisition powers was an important consideration for the purposes of section 122(3) of the Planning Act 2008. The applicant noted the potential for the exercise of those powers to interfere with human rights and equality considerations. Accordingly, it was entirely appropriate and legitimate for the applicant to have regard to this and to have taken steps to lessen the impact on landowners as part of a co-ordinated design strategy [REP4-060].

3.3.27. IPs also suggested that a sub-optimal location for the proposed development had been driven by the grid connection at Staythorpe [RR-213, REP1-087]. The applicant acknowledged that, inevitably, the site search began by looking for areas outward of the Staythorpe substation, and the process was guided by both policy principles and the technical/ environmental requirements of a large-scale solar project [REP2-115].

3.3.28. More generally, Newark and Sherwood District Council (NSDC) suggested that the design process described had focused on the constraints to scheme design, but that the spatial representation of genuine alternatives had not been presented [REP1-076]. At ExQ2 Q12.2.1 [PD-011] the ExA asked NSDC for clarification on what further information would be required to address its concerns on these matters. It suggested that information presented on plans and/ or maps, perhaps with an accompanying note/ information provided in tabular form, identifying environmental and/ or other constraints would improve clarity on the 'actual' other areas of land that were considered and otherwise discounted for environmental reasons. NSDC stated that as this information is not clearly set out in the ES, it is deficient in this respect [REP4-062].

3.3.29. This remained an area of disagreement between the parties, with the applicant setting out that NSDC had not suggested any specific land or sites that should have been considered or given feedback on this at any point during the pre-application process. Further, the applicant stated that the site selection process identified potentially developable land having regard to physical, environmental and economic factors, and was informed by an iterative design evolution process, as set out in ES Chapter 4 Alternatives [REP6-042, REP6-064].

ExA's consideration

3.3.30. With specific reference to solar photovoltaic generation, section 2.10 of EN-3 sets out the range of factors influencing site selection and design. These

include irradiance and site topography, noting the favourability of exposed sites of good elevation, the need to be aware of sensitive receptors, the need to avoid BMV and the need to consider access routes.

3.3.31. In presenting the spatial evolution of the proposed development, the applicant's DAD sets out the steps undertaken in the design process to define the search area in relation to the grid connection and development constraints. This presents an iterative process in which there has been a refinement of the proposals in response to consultation and a greater appreciation of site constraints. Though noting that potential alternative site layouts are not presented in any detail, the ExA considers that the applicant's approach demonstrates a reasonable sensitivity to place. Whilst matters relating to the use of BMV land and flood risk are considered in greater detail in sections 3.4 and 3.15 of this chapter, at this point the ExA is satisfied that the approach to site selection is adequately rationalised and presented.

Whether the dispersed configuration of the proposed development has been justified

3.3.32. Interested parties criticised what is described as the unconventional circular configuration of the proposed development [RR-162, REP1-091, REP1-123, RR-169, RR-174], suggesting that this would be unsuitable for this sensitive rural setting. They refer to conventional solar farms having concentrated layouts in order to minimise land take and disruption.

3.3.33. In contrast, the dispersed arrangement of the proposed development means that its effects would be felt across a much wider area. In particular, the central area would be impacted by the circular layout, causing considerable visual intrusion for the contained communities and also resulting in habitat fragmentation. It was suggested that this would turn a cohesive agricultural landscape into a patchwork of industrial elements.

3.3.34. The scale and configuration of the proposed development was discussed in ISH1 [EV3-001, EV3-003]. In response to the concerns raised around the approach to site selection, the applicant explained that rather than identifying a piece of land of an appropriate size close to the grid connection, suitable land across a wider area was considered based on design criteria. It thereby sought to find the best locations from an environmental perspective that also met the technical requirements of the proposed development [REP1-068].

3.3.35. The applicant also set out that in explaining the rationale for site selection it is not necessary to provide detailed justification for each parcel of land selected or discounted. Rather, it is about presenting a sensible and logical approach to site selection which is supported by policy. The purpose of the examination is then to discuss the impacts and benefits of the resulting proposal [REP1-068].

ExA's consideration

3.3.36. The ExA notes that EN-1 and EN-3 refer to broad parameters for site selection. They set out that it is necessary to demonstrate a robust and policy compliant approach to site selection and design, and to demonstrate that the

impacts, possible benefits and mitigation opportunities have been addressed within this framework of policy parameters. These provisions over-ride considerations relating to the particular configuration derived from this process.

3.3.37. It is the ExA's opinion that in this case the applicant has demonstrated how a sufficiently robust approach to site selection has been demonstrated overall. This view has been reached noting that detailed reviews of the compliance with the siting requirements relating to topic specific policy provisions are contained in other planning merits sections of this chapter. This includes the landscape and visual (section 3.10) and biodiversity (section 3.5) sections of this chapter.

The extent to which good design principles have been embedded and how detailed design control would be managed

3.3.38. The ExA sought further detail of how good design principles have been embedded into the design process during ISH1 [EV3-001, EV3-003]. The applicant explained how the framework set out by the NIC's overarching design principles, and the design policies set out in EN-1 and EN-3 had been used to develop a series of overarching design principles for the proposed development (set out at Figure 3 above). The scheme design was subject to multiple rounds of consultation, including a planning performance agreement with NSDC that enabled them to appoint an independent landscape design advisor [REP1-068].

3.3.39. In terms of how design details would be refined, the applicant explained that the CDPP had been prepared in order to ensure that the principles of good design set out within the DAD would be secured through later detailed design stages. The final details would be derived following the completion of further archaeological intrusive survey works and other technical surveys. More generally, the applicant set out that flexibility is required as the technologies proposed are rapidly evolving, meaning that it is important to allow the proposed development to utilise the best available technology available at that time in order to maximise the benefits could be delivered [REP1-068].

3.3.40. Reference was made to the need for flexibility in design, layout and technology being recognised in the assessment principles set out in EN-1 section 4.3, and the management of flexibility set out in EN-3 paragraphs 2.6.1 to 2.6.3 and paragraphs 2.10.70 to 2.10.72 [REP1-068].

3.3.41. The ExA sought clarity on the extent of flexibility sought, noting the need to assess the likely worst case environmental, social and economic effects. ExQ1 Q1.1.5 [PD-008] referred to the fact that in the ES Chapter 5 Description, the maximum parameters referred to as the 'design limitation' are often greater than the values referred to as the 'illustrative design'. However, the illustrative design is referred to as a realistic and buildable design for which each parameter is within the allowed range for that parameter. The ExA sought to understand whether this meant that, for example, in relation to the solar PV modules referred to in table 5.3, the environmental effects have been assessed on the basis of the 3.5m

maximum height referred to as the ‘design limitation’, rather than the 2.47m maximum height referred to as the ‘illustrative design’.

3.3.42. In response the applicant confirmed that the environmental effects have been assessed on the basis of a realistic worst-case scenario. Generally, this is the maximum (or worst-case, if that is not the maximum) parameter value referred to as the ‘design limitation’, rather than the value referred to as the ‘illustrative design’ [REP2-117].

3.3.43. During ISH3 [EV7-002, EV7-004, EV7-006, EV7-008] the ExA sought further clarification on how detailed design matters would be managed, noting that design parameters are set out as a range of values within the CDPP. The applicant explained that this would be secured by requirement 6 of the DCO relating to detailed design control. Specifically, detailed design arrangements for layout, scale, proposed finished ground levels, external appearance, hard surfacing materials, vehicular and pedestrian access, parking and circulation areas, refuse units, signs and storage would be prepared for each phase of the development. This would relate to the development phases approved pursuant to requirement 3. These details must accord with the CDPP and be submitted to NDSC for approval before that phase can commence [REP3-101].

3.3.44. The ExA also sought further information relating to the design of the intermediate substations at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008]. It was noted that in response to ExQ1 Q1.1.7 [PD-008], which asked about the lack of information relating to the design parameters of the proposed intermediate substations, the applicant had provided Figures 5.19, 5.20 and 5.21 to supplement ES Chapter 5 Development Description [REP2-038]. These additional figures show the dimensions and colours of the ancillary buildings [REP3-101].

3.3.45. Nonetheless, during the ISH3 discussion [EV7-002, EV7-004, EV7-006, EV7-008] the ExA referred to the lack of illustrative material relating to the intermediate substations, including how permanent buildings would be designed to reflect local character, as suggested by the DAD. The ExA noted that there was a lack of clarity about how this could be achieved, particularly in relation to the substations that would be close to visual receptors such as roads. The photomontages represent these structures in basic terms, as illustrated in relation to viewpoint 30 (Figure 7) [AS-039]. In response, the applicant referred to the fact that the visualisations show the Rochdale Envelope for the intermediate substations, which would not occupy the full extent of the area. In the example, only the roof of any building and the tops of taller electrical equipment would be seen above the solar arrays [REP3-101].

Figure 7: Viewpoint 30(c) photomontage at completion, with intermediate substation presented as a long green box



Source: [AS-039]

3.3.46. Carlton-on-Trent Parish Council raised specific concerns about the intermediate substation proposed adjacent to Ossington Road, noting that this would be a lasting infrastructural presence within the immediate landscape of Carlton-on-Trent and expressing concerns about the lack of clarity in terms of scale [REP3-104]. The applicant in their response [REP4-059] set out that the areas identified for the intermediate substations are generally larger than the actual substations would be to allow for design flexibility. However, an indication of their expected dimensions and colours had been provided in Figures 5.19, 5.20 and 5.21 of Chapter 5 [REP2-038].

3.3.47. More generally, the residents of Caunton Lodge Farm (CLF) referred to the fact that EN-1 sets out that harm must be avoided through good design, where reasonably possible. They questioned whether the applicant had properly applied this avoidance-first hierarchy in the specific design of the array areas to the south and south-west of CLF, the proposed permissive route to the west of CLF, and the services corridor arrangements. Noting that the applicant had modified the layout elsewhere to respond to sensitivities or impacts, CLF residents questioned why equivalent flexibility had not been applied in the immediate vicinity of CLF. They pointed out that here the harms would be concentrated on a single residential and business receptor, where the relevant solar parcels would make a marginal contribution to overall capacity [REP3-111].

3.3.48. In response the applicant referred to paragraph 5.10.26 of EN-1 which sets out that reducing the scale of a project can help to mitigate the visual and landscape impacts of a proposed project but could result in a reduction in function - for example electricity generation output. It goes on to recognise that there may be exceptional circumstances where mitigation could have a very significant benefit and warrant a small reduction in function. This would include where landscape and/ or visual effects may outweigh the marginal loss of function [REP4-059].

3.3.49. The applicant's view was that in the circumstances of CLF, a reduction to the scale of the proposed development is not one of the exceptional situations anticipated by EN-1. The changes suggested were not considered to be a reasonable alternative, given the overall objective of maximising energy generation potential and making best use of the grid connection offer. Further, the applicant did not consider that a reduction in scale in this case

would reduce the magnitude of any identified effect or have a significant benefit in terms of reducing visual and landscape impacts. The applicant also stated that the associated loss in function would be more than a "marginal loss" [REP4-059].

3.3.50. In a further representation from CLF residents, it was suggested that the applicant had not provided a site-specific assessment demonstrating that layout refinements would not reduce the identified effects [REP5-047, REP5-050]. This position was maintained in their final statement which set out that the applicant had proceeded to mitigation without adequately demonstrating whether the identified harm could reasonably have been avoided through design changes, including the omission or reconfiguration of solar block W18.3 [REP6-070, REP6-071]. In its closing statement the applicant reiterated that the design of the proposed development has sought to minimise adverse impacts as far as reasonably possible, using proportionate mitigation where necessary [REP6-064].

3.3.51. The specific concerns of CLF residents relating to landscape and visual effects and heritage impacts are considered in sections 3.10 and 3.7 of this chapter, respectively.

ExA's consideration

3.3.52. The ExA is generally satisfied that the principles of good design have been embedded in the proposed development from an early stage (pre-application). They would provide a framework for the ongoing development of detailed design post-consent. Therefore, whilst the clarity sought on intermediate substation design is not yet available, this would be controlled by the parameters set out in the CDPP, the implementation of which would be secured by schedule 2 requirement 6 dDCO of the rDCO. This is included in the ExA's recommended DCO (rDCO) (Appendix A). Requirement 6 requires details of layout, scale and external appearance to accord with the CDPP and be approved by the planning authority.

3.3.53. The ExA also considers that the approach to detailed design management is reasonable. It would be sufficient to ensure that future consenting would contribute to good design and wider landscape and visual objectives, whilst also allowing for some flexibility in the consent to account for uncertainties in specific project details.

CONCLUSIONS

3.3.54. An infrastructure development of this scale and nature would inevitably have far reaching effects on the environment. In considering the extent to which the site selection and design processes have sought to minimise harmful effects, EN-1 sets out the broad parameters of good design. This goes beyond visual appearance, noting that good design should produce sustainable infrastructure that is sensitive to place and efficient in the use of natural resources, including land-use, and the energy used in their construction and operation. These considerations should be matched by an appearance that demonstrates good aesthetics as far as possible.

3.3.55. The design principles set out by the applicant display an effort to embrace a holistic approach to good design, seeking to balance functionality alongside aesthetics and sensitivity to place. Whilst the site selection process was clearly driven by the grid connection point and various physical and environmental constraints, the subsequent iterative approach to design refinement demonstrates an attempt to follow these principles.

3.3.56. In pursuing these principles, the applicant has shown that consideration has been given to landscape and visual amenity, particularly in the design refinement stage. Ultimately however, the ES establishes that landscape and visual considerations would have the most significant harmful impacts.

3.3.57. In this sense there are tensions with local policy provisions as set out in NSDC's LIR [REP1-075]. This includes the Newark and Sherwood Amended Core Strategy (2019) Core Policy 9, which sets out the expectation that new development proposals will demonstrate a high standard of sustainable design that both protects and enhances the natural environment and contributes to and sustains the rich local distinctiveness of the District. Similarly, Newark and Sherwood Allocations and Development Management DPD (2013) Policy DM5 sets out various design criteria including the protection of amenity, local distinctiveness and character, trees, woodland, biodiversity and green infrastructure. However, the ExA notes that these provisions relate most directly to the consideration of planning applications rather than national infrastructure projects.

3.3.58. It is reasonable that the applicant should seek approval for design within parameter ranges due to the rapid pace of technological advancement in both the solar photovoltaics and energy storage system sectors. Such flexibility would enable the use of the most up-to-date technology. This is recognised within EN-1 (paragraph 4.3.18), on the basis that the ES considers the worst-case impacts.

3.3.59. At the post-approval stage, the rDCO schedule 2 requirements relating to detailed design control (requirement 6) and the implementation of the landscape and ecological management plan and biodiversity design strategy (requirement 8) would support the delivery of a well-designed scheme, including the management and mitigation of harmful effects.

3.3.60. Overall, in terms of the approach to site selection and design matters, the ExA considers that the applicant has demonstrated compliance with the principles set out in EN-1 and EN-3. This is a matter which should carry neutral weight in the planning balance.

3.4. AGRICULTURAL LAND

INTRODUCTION

3.4.1. This section considers the effects of the proposed development on agricultural land. This includes the effects on agricultural land and soils as a resource, and the effects on associated economic activity.

3.4.2. In considering matters related to agricultural land, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.11 'Land Use, Including Open Space, Green Infrastructure, and Green Belt'
- the NPS for Renewable Energy Infrastructure (EN-3), in particular section 2.10 'Solar Photovoltaic Generation'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.4.3. The applicant's assessment of the potential impacts of the proposed development on agricultural land is presented in the Environmental Statement (ES) Chapter 17 Agricultural Land [APP-060]. This was updated as revision 2 [REP2-032].

3.4.4. The assessment is supported by:

- Agricultural Land Classification (ALC) study [APP-288, APP-289]
- Farm Reports [APP-294]
- Outline Soil Management Plan (oSMP) [APP-290, APP-291, APP-292, and APP-293], updated to revision 3 [REP3-065]

Baseline

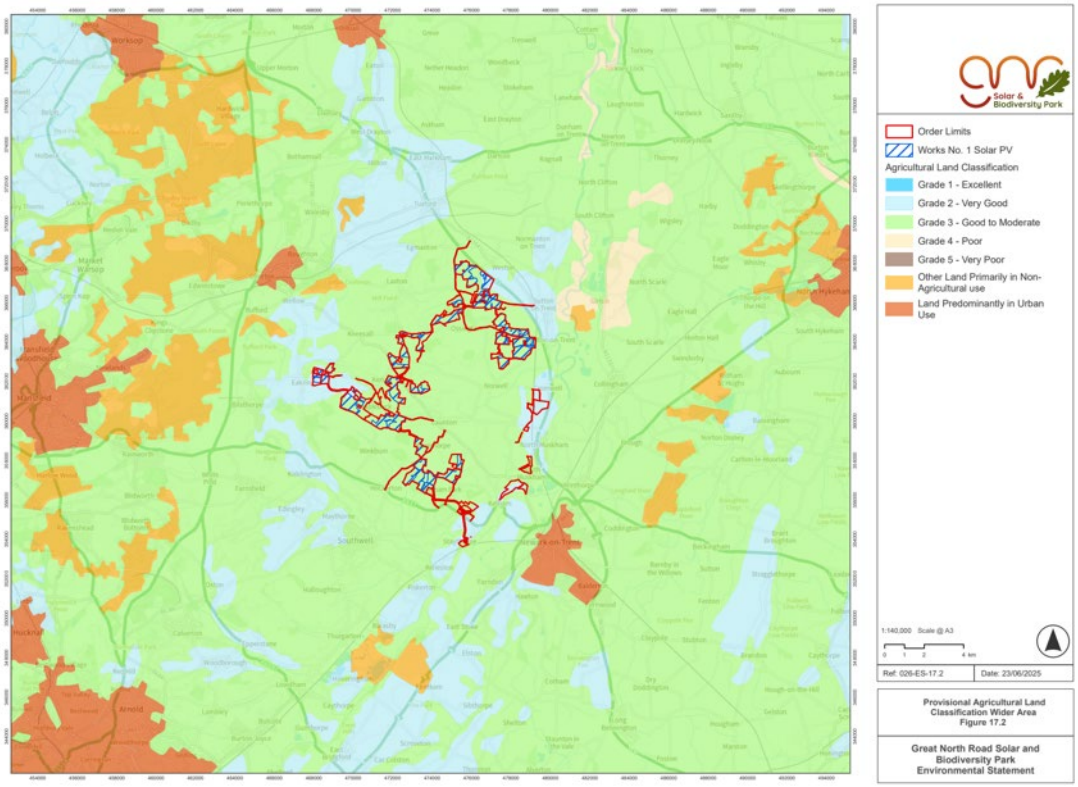
3.4.5. The study area is comprised of the land encompassed within the Order limits. This is the area in which the potential effects are assessed by the applicant.

3.4.6. Baseline conditions for the Order limits were initially established using the provisional ALC maps, published by the Ministry of Agriculture, Fisheries, and Food (MAFF). These showed that the Order limits are comprised of mostly Grade 3 land, with small parts of the Order limits falling within Grade 2 land. This is shown in Figure 8.

3.4.7. An ALC survey was undertaken between May 2022 and March 2023, with additional inspections in June and October 2024. This survey determined that the land within the Order limits consists mostly of Grade 3a and 3b (good to moderate quality) land, with a small proportion consisting of Grade 2 (very good quality) land. Best and most versatile agricultural land (BMV) is considered to be that which is of ALC grade 1, 2, or 3a.

3.4.8. The survey results are shown within Table 2, which shows the breakdown of land grade by area and proportion, and identifies which land grade is BMV land.

Figure 8: Agricultural land classification for the proposed development



Source: ES Figure 17.2 [APP-180]

Table 2: ACL results for the proposed development

ALC Grade	Description	Area (ha)	Proportion (%)
1 (BMV)	Excellent	0	0.0
2 (BMV)	Very Good	149	8.5
3a (BMV)	Good	944	53.5
3b	Moderate	596	33.8
4	Poor	1	0.0
5	Very Poor	0	0.0
N/A	Non-agricultural or not surveyed	75	4.2
Total		1,765	100.0

Source: Table 17.5 of ES Chapter 17 [REP2-032]

Methodology

3.4.9. The applicant's assessment of effects considers the effects on soils and BMV agricultural land, and the effects on the operations of farming businesses

within the Order limits. The wider local economic impacts from changes to the operations of farming businesses are also considered as part of the assessment.

3.4.10. Effects are assessed for the construction, operation, and decommissioning phases of the proposed development. The construction works are considered to comprise the following:

- installation of the solar PV arrays
- cable routes
- access routes
- construction compounds
- substation and battery energy storage (BESS) areas
- ecological mitigation and wildlife enhancement sites

Agricultural land

3.4.11. Within the assessment, BMV agricultural land of ALC grades 1, 2 and subgrade 3a is considered to be of the highest sensitivity, and land of subgrade 3b is considered to be of medium sensitivity.

3.4.12. In line with advice from Natural England (NE), the permanent loss of more than 20ha of BMV land is considered to be a high magnitude impact, and therefore a significant effect, and the permanent loss of between 5ha and 20ha of BMV land is considered to be a medium magnitude impact, and therefore a significant effect.

3.4.13. The assessment assumes that a permanent loss of land would mean an irreversible loss of land, including permanent sealing of land or downgrading of land quality. This is in line with guidance from the Institute of Environmental Management and Assessment (IEMA). BMV land that would be disturbed by the proposed development, but capable of being restored, is not considered within the calculation of permanent loss of BMV land in the assessment.

Soils

3.4.14. The assessment of the impacts and effects on soils considers the different soil types and their sensitivity to damage, which follows the published IEMA guidance. Significant adverse effects are considered to occur where the proposed development would lead to the permanent loss, including permanent sealing or land quality downgrading, of over 20ha of soil-related features.

Farming businesses

3.4.15. With regards to impacts on the operations of farming businesses, the applicant considers adverse effects on farm businesses to be significant where a business would be rendered non-viable as a result of the proposed development, where significant changes in the day-to-day management of an impacted farming business would be required, or where partial closure of a business would occur.

Cumulative Effects

3.4.16. The applicant's approach to the assessment of cumulative effects is set out in ES Chapter 2: Environmental Impact Assessment (EIA) [APP-045]. Developments taken forward for cumulative assessment with respect to agriculture and land use are identified in section 17.10 of ES Chapter 17.

Mitigation

Avoidance of BMV land

3.4.17. The applicant's approach to the avoidance of BMV land during site selection is described in ES Chapter 4 Alternatives [APP-047], as well as the updated Planning Statement [REP3-018], which both explain how the applicant has focused on the avoidance of ALC grades 1 and 2 during the early stages of site selection.

3.4.18. The approach started with the identification of the different ALC grades within the site selection search area, after which a series of constraining factors were then applied in order to prioritise land that would be preferred or excluded from the proposed development, on the basis of avoiding ALC grade 1 and 2 land.

3.4.19. The ALC grades and constraining factors, as well as constraining factors for other criteria, were then combined into a heat map (ES Figure 4.3 [APP-074]) showing the least suitable and most suitable areas for the identification of land to be taken forward to the scoping of the Order limits.

Soil Management Plan

3.4.20. The proposed mitigation measures that would be included during the construction period of the proposed development are set out within the oSMP [REP3-065].

3.4.21. The oSMP sets out the key measures and principles in relation to the handling of soils for the different works areas during construction and decommissioning. It aims to minimise disturbance to soils during construction, and to enable the restoration of disturbed ALC grade land to the same grade after construction works, as well as after decommissioning. Key measures and principles outlined in the oSMP include the following:

- the timing of works when soils are suitably dry
- the retention of soil profiles
- the avoidance of soil compaction
- the ameliorating of soil compaction

3.4.22. The oSMP would be secured in schedule 2, requirement 20 of the draft Development Consent Order (dDCO) [REP6-004].

Assessment of likely significant effects

3.4.23. Section 17.8 of ES Chapter 17 details the effects as assessed by the applicant for agricultural land, soils, and farming businesses during

construction, operation, and decommissioning of the proposed development [REP2-032].

Construction

3.4.24. The applicant concludes that the proposed development would not significantly disturb agricultural land quality, with a total of 19.4ha of BMV land being impacted or disturbed due to construction works, and the majority of this being restored upon decommissioning. Effects on agricultural land quality are therefore assessed to be minor adverse and therefore not considered significant in EIA terms.

3.4.25. Effects on soils are considered to be of a temporary and minimal nature and therefore of minor adverse significance, and not significant in EIA terms. Effects on farming businesses are considered to be temporary and short-term, of negligible or minor adverse, and therefore not significant.

Operation

3.4.26. The applicant considers that there would be no further changes to agricultural land from the operation of the proposed development and concludes that the effects would therefore be negligible, and not significant. A minor, beneficial, and not significant effect is identified for soil health as a result of the grazing of sheep and a potential reduction in soil compaction from farm machinery during the operation of the proposed development.

3.4.27. The assessment of effects during operation considers the impacts to farming businesses, as well as the implications for food production and the wider local economy. Effects on farming businesses are considered to be negligible or minor adverse, and therefore not significant, and effects on food production and the wider local economy are considered to be negligible and therefore not significant.

Decommissioning

3.4.28. The applicant concludes that the effects from the decommissioning of the proposed development to agricultural land, soils, and farming businesses would be negligible or minor adverse, and therefore not significant in EIA terms.

Cumulative effects

3.4.29. As part of its assessment of the cumulative effects on agricultural land, the applicant concludes that, in combination with the other developments taken forward for cumulative assessment, the proposed development would involve the use of approximately 3,505ha of BMV land within Nottinghamshire and Lincolnshire. This would represent a 0.028% reduction in the amount of available BMV land in England.

3.4.30. The applicant therefore concludes that the proposed development, in combination with the developments taken forward for cumulative assessment, would not result in any significant effects to agricultural land.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.31. The main issues considered during the examination related to the following:

- the applicant's approach to site selection and the avoidance of BMV land, including loss of ALC grades 2 and 3a land
- the approach to the proposed planting of woodland on BMV land
- BMV land disturbed during construction
- the cumulative effects assessment
- the economic impacts from the loss of BMV land, including food production

Site selection and the assessment of effects

3.4.32. Concerns were raised by NE [RR-154], Newark and Sherwood District Council (NSDC) [REP1-075], the Joint Parishes Action Group (JPAG) [RR-101], and Carlton on Trent Parish Council (CTPC) [REP1-072] around how the applicant's site selection process for the proposed development sought to minimise the land take of BMV land, most significantly in relation to ALC grades 1 and 2.

3.4.33. NE's principal concerns were outlined in its relevant representation (RR) [RR-154] and remained outstanding in its final signed statement of common ground (SoCG) with the applicant [REP6-048]. These concerns were that:

- whilst it considered the applicant to have shown that higher grade ALC land had been avoided during the initial stages of site selection, there was little evidence of how this land had been avoided during subsequent stages
- there was no evidence of micro siting of land to avoid the higher ALC grades.

3.4.34. NSDC outlined similar concerns in its LIR [REP1-075] and during Issue Specific Hearing (ISH)1 [EV3-001, EV3-003], with outstanding concerns remaining in its final signed SoCG with the applicant [REP6-042]. Noting that 62% of land within the Order limits would be of BMV quality (mostly grade 3a), with 8% being ALC grade 2 land, NSDC's position was that:

- the loss of ALC grade 2 land should be avoided, and that the applicant had not demonstrated how lesser grade land had been ruled out during its site selection process
- the applicant had therefore failed to demonstrate how it had followed the mitigation hierarchy, specifically in relation to the first step of 'avoidance'
- as a matter of principle, it did not agree with the applicant's assessment of the significance of effects on agricultural land; in response to the ExA's first written questions (ExQ1) Q3.1.7 [PD-008], NSDC further stated that it considered these effects to be significant [REP2-120].

3.4.35. JPAG noted concerns in relation to site selection in its RR [RR-101], querying why ALC grade 3 land had not been ruled out at the initial stages of site selection, and citing that the need for solar development to avoid BMV land

was clarified in the Written Ministerial Statement of May 2024 'Solar and protecting our Food Security and Best and Most Versatile Land' (2024 WMS).

3.4.36. A number of concerns relating to site selection, including the process followed by the applicant, and the avoidance of BMV land, were raised by CTPC [REP1-072]. CTPC also considered that some of the fields within the Order limits in the Carlton on Trent area identified as ALC grade 3b by the applicant should have been considered as BMV land due to their historical production yields.

3.4.37. The applicant's position in relation to these concerns was outlined in its Response to the Relevant Representations report [REP1-065], its response to NSDC's LIR [REP2-116], during ISH1, in its final SoCGs with NE and NSDC and in its closing statement [REP6-064]. Its position was as follows:

- it sought to minimise the selection of higher-grade land during its site selection process, which was informed by NE mapping and its own ALC survey
- it had identified 25ha of ALC grade 1 land in the initial stages of the process and excluded it from the Order limits, and that the area of grade 2 land had been reduced
- paragraph 2.10.29 of EN-3 states that land type should not be a determining factor in establishing the suitability of site location
- national policy and guidance on BMV land does not mandate the consideration of alternatives or the adoption of a sequential assessment (Bramley Solar Farm Residents Group v SSLUHC [2023], paragraphs 179-1803)
- whilst MAFF mapping was used to identify land quality expectations at the initial stages of site selection, the MAFF maps are not sufficiently accurate or detailed to assess individual parcels of land; a separate detailed ALC survey was therefore undertaken to identify grades 1, 2, 3a and 3b land for further consideration

3.4.38. The ExA explored this issue during ISH1[EV3-001, EV3-003]. The ExA asked the applicant to explain if and how the avoidance of grade 2 ALC land had been taken into consideration during stages three and four of site selection, as it was not initially clear in ES Chapter 17 [REP2-032].

3.4.39. The applicant responded that site selection was undertaken using the MAFF land maps, and that grade 2 ALC land was avoided during the initial stages of this process, when creating a search area. The applicant considered that these land maps should be treated with a degree of caution due to their age, that it would be too onerous to physically survey every parcel of land in the site selection process in order to determine their precise classification, and that it would only be after initial negotiations with individual landowners that those plots of land could be physically surveyed [REP1-068].

3.4.40. Furthermore, in response to concerns raised by NSDC during ISH1 about the proportion of ALC grade 2 land within the Order limits (and the potential for subsequent long-term effects on food production), the applicant submitted that ALC grading of BMV land is intermixed across multiple areas and likely

to form part of a bigger field. It would therefore be impractical to leave areas of grade 2 land undeveloped within a field that may contain areas of lower grade land which would be used for solar development [REP1-068].

3.4.41. Noting NE's position with regards to micro-siting [RR-154], at ISH1 [EV3-001, EV3-003] the ExA requested that further information be provided by the applicant to clarify its approach. The applicant provided this information in the form of a separate micro siting analysis report [AS-092], which further detailed how BMV land was avoided during the later stages of site selection, when individual plots of land had been identified within the Order limits, and after physical surveying.

3.4.42. NE considered that this analysis report sufficiently demonstrated how BMV land had been avoided throughout the site selection process, including the micro-siting processes undertaken for the later stages of site selection. NE also considered that the report provided a clear rationale for the permanent loss of 4.5ha of BMV land outlined by the applicant, which had been identified in both the micro-siting report and in the ES [REP4-066].

ExA's Consideration

3.4.43. The ExA has considered all of the arguments put forward by NE, NSDC, JPAG, CTPC, and the applicant, as well as the provisions set out in EN-1 paragraph 5.11.12 and EN-3 paragraph 2.10.29, and the 2024 WMS, which seek to encourage the development of solar PV on land of lower agricultural quality, such as ALC grades 3b and 4, rather than BMV land.

3.4.44. With regards to the process of the siting of the proposed development, the ExA acknowledges the explanations put forward by the applicant. The subsequent agreement from NE with regards to the demonstration of the approach is also noted. The ExA accepts that the initial site selection mapping used, whilst appropriate, is not sufficiently accurate or detailed to assess individual fields or sites, that it would be overly onerous to physically survey every parcel of land within an initial site search area, that the initial site selection process considers a multitude of different factors, of which the avoidance of BMV land is only one, and that the applicant has sought to avoid the higher ALC grades within the process.

3.4.45. The ExA is therefore satisfied that the applicant has adequately demonstrated how it has sought to avoid BMV land when establishing the Order limits for the proposed development, and that an adequate process to this end was followed, consistent with the provisions of EN-1 paragraph 5.11.12 and EN-3, paragraph 2.10.29 to 2.10.33. The ExA considers that the applicant has applied the mitigation hierarchy to avoid effects where possible.

3.4.46. Notwithstanding, some 62% of the Order limits for the proposed development does fall within BMV land, composed of predominantly grade 3a land (53.5%), with a much smaller proportion of grade 2 land (8.5%). As set out by the applicant in its closing statement [REP6-064], this is set against a national proportion of 41.3% BMV land. The ExA considers that this indicates that the proposed development represents a slightly larger BMV land

requirement than may be expected. The ExA notes that no grade 1 land is included, and that the applicant did exclude grade 1 land during the site selection process.

3.4.47. A total of 1,093 ha of BMV land would therefore be unavailable for the 40-year operation of the proposed development. Whilst the applicant has argued that this would not constitute a permanent loss of BMV land and that the land would be restored to its original condition upon decommissioning, the ExA considers that this would still constitute loss of availability of BMV land for a significant period of time (albeit temporary) and would therefore weigh negatively against the proposed development.

Woodland planting on BMV land

3.4.48. NE raised concerns around the potential for permanent loss of BMV land due to the woodland creation intended as part of the mitigation and enhancement proposals for the proposed development. NE considered that the woodland planting in parcels of land set aside for woodland creation would constitute a permanent loss of agricultural capability, meaning a permanent land use change and therefore the loss of 22.4ha of BMV land which should be considered as such in the ES [RR-154].

3.4.49. This was in contrast to the applicant's position set out in its Section 42 response to NE (Table 17.1 [REP2-032]), which set out that woodland planting would not affect soil resource, and that it was therefore suitable to design the planting for maximum ecological benefit rather than the avoidance of BMV land.

3.4.50. This remained as an area of disagreement at the close of the examination and was identified as such in the final signed SoCG with NE [REP6-048].

3.4.51. The applicant's final position [REP6-064] was that whilst the proposed woodland planting would extend to 22.4ha, it would not disturb the soil or land quality resource as the trees would be directly planted into the soil. Furthermore, the applicant set out that:

- of the 22.4ha referenced above, only 1.0ha would be grade 2 land, and the rest (21.4ha) would be subgrade 3a. The NE and the Forestry Commission's "Joint Statement on Woodland Creation" (April 2023) encourages woodland creation on land of ALC grades 3a, 3b, 4 and 5
- ecology and landscape benefits would be reduced by planting trees on lower grade agricultural land
- woodland planting on better quality land was not a significant wider concern due to the availability of grant schemes for woodland planting that do not consider ALC grades
- the use of BMV land would be restricted mostly to subgrade 3a, meaning that the effects in respect of useable farmland would be limited.

3.4.52. The ExA questioned NE at ExQ1 Q3.1.2 [PD-008] about whether the inclusion of the BMV land potentially permanently lost due to woodland

planting within the applicant's assessment would change the conclusions of the assessment and potentially require additional mitigation.

3.4.53. NE responded that a loss of more than 5ha of BMV land due to woodland planting would constitute a medium magnitude of impact, leading to a moderate adverse effect that would be considered significant in EIA terms. NE did not propose any additional mitigation to reduce the potential loss [REP2-127].

3.4.54. In its closing statement, the applicant concurred with NE that if the 22.4ha of woodland planting was regarded as being permanently lost, the effect would be significant. However, the applicant considered that the impact would be high magnitude, on a resource of high sensitivity, resulting in a major adverse (and significant) effect [REP6-064].

ExA's consideration

3.4.55. In its consideration of the arguments put forward by NE and the applicant, the ExA acknowledges that the position with regards to whether woodland planting would cause a permanent loss of BMV land or not depends on whether the matter is considered from a physical, soils perspective, or a land use perspective. The applicant has also alluded to this difference in its closing statement [REP6-064].

3.4.56. The ExA's position is that the planting of trees would be unlikely to lead to permanent physical damage to the 22.4ha of BMV land used for woodland planting in terms of permanently degrading its soil composition. In this sense the planting of trees would not irreversibly damage the soil in the same manner as, for example, large concrete foundations.

3.4.57. However, in terms of the assessment of the effects of using this land for woodland, and the overall land use considerations, the ExA notes the following:

- in ISH1 discussions with regards to the provisions set out in the outline Landscape and Ecology Management Plan (oLEMP) [REP6-029] and outline Decommissioning and Restoration Plan (oDRP) [REP4-021], the applicant has stated that the woodland planting would have a higher degree of permanence when considered in relation to decommissioning and restoration [REP1-068]
- paragraph 21 of the oDRP states that woodland and hedgerows would be retained once the proposed development enters the decommissioning phase
- given the beneficial objectives for the woodland planting set out in Table A5.1.3 of the oLEMP, it seems unlikely to the ExA that any authority would seek the removal of woodland post-decommissioning

3.4.58. For these reasons, it is reasonable to assume that the woodland planting would be a permanent feature of the landscape post-decommissioning. The ExA therefore agrees with NE that there would be a permanent loss of agricultural capability, and a permanent land use change. In using the applicant's own assessment methodology set out in the ES Chapter 17 and

considering the applicant's and NE's positions on the issue, it therefore follows that the loss of BMV land due to 22.4ha of woodland planting would constitute a high magnitude of impact on a resource of high sensitivity, which would result in a major adverse and therefore significant effect.

3.4.59. When combined with the 4.5ha of permanent loss of BMV land identified in the applicant's assessment in ES Chapter 17 [REP2-032], the proposed development would lead to a permanent loss of 26.9ha of BMV land. This would weigh negatively against the proposed development.

Cumulative effects assessment

3.4.60. At ISH1 the ExA asked the applicant for clarification on the calculation of the total figure of 2000ha of BMV land affected by the proposed development when combined with other developments in the cumulative effects assessment [EV3-001, EV3-003]. The ExA considered that the 2000ha figure was not initially consistent with the data provided in the assessment in Table 17.21 of the initial version of ES Chapter 17 [APP-060].

3.4.61. In response [REP1-068], the applicant explained that it had combined the area of grades 1, 2 and 3a from each of the schemes listed in Table 17.21 of ES Chapter 17. The ALC figures for the Beacon Fen development in Table 17.21 were mistakenly those for the cable route, not the site, and an additional 211ha of BMV was therefore associated with the Beacon Fen solar farm site. The applicant also identified that the One Earth development was missing from the cumulative table. The updated cumulative total would be 3,222ha in total and would not change the overall conclusion of the assessment.

3.4.62. The applicant provided an updated assessment, revision 2 [REP2-032], with the updated cumulative totals. The assessment concluded that if all the developments within the cumulative effects assessment were to be consented, the proposed development would represent a reduction in BMV land of 0.0296%, which was not considered to be significant.

3.4.63. NSDC also raised concerns at ISH1 [EV3-001, EV3-003] about the approach to the cumulative effects assessment. NSDC considered that the applicant should have undertaken a cumulative effects assessment on the basis of district-level data, so that the localised effects for each local authority would be better understood. This point was also supported by JPAG, who considered that the proposed development, when combined with others in the area, would represent a massive project.

3.4.64. NSDC further advised that the inclusion of the One Earth solar development and correction of the figures for the Beacon Fen solar development within the applicant's assessment meant that there would be an 872ha increase in the cumulative total of BMV land included, which represented a 37% increase and a significant change from the initial assessment.

3.4.65. The applicant responded [REP1-068] that under Planning Inspectorate guidance, the zone of influence for effects on BMV agricultural land would

ordinarily be limited to the Order limits only. This was the applicant's initial approach as presented in the Preliminary Environmental Information Report. The inclusion of NSIP solar schemes at a wider geographic scale was undertaken at the request of NSDC. This approach represented a divergence from the Planning Inspectorate's cumulative impact assessment methodology, which would not normally require a wider-zone BMV assessment.

3.4.66. The ExA asked if NSDC had any comments with regards to the overall significance of effects on agricultural land at ExQ1 Q3.1.7 [PD-008]. In response, NSDC stated that it considered the cumulative effects to be significant [REP2-120]. This matter remained as an area of disagreement between NSDC and the applicant in the final signed SoCG [REP6-042].

ExA's consideration

3.4.67. Taking into consideration the arguments put forward by the applicant, as well as its revised cumulative assessment, the ExA is satisfied that the applicant has adequately assessed the cumulative effects of the proposed development on agricultural land, and that the revised assessment provided does not fundamentally alter the conclusions of the cumulative effects assessment.

3.4.68. The ExA acknowledges the comments made by NSDC and JPAG with regards to the provision of district-level data for cumulative effects assessment and considers that this would have been useful in further understanding the effects.

3.4.69. The ExA also notes the position of NSDC with regards to the cumulative effects of the proposed development on agricultural land being significant, both at a local level and cumulatively. As stated by NSDC, these concerns were advanced as a matter of principle in relation to the overall effects on agricultural land being significant. Whilst the ExA acknowledges NSDC's position, further substantiation, or quantification in relation to the sensitivity of relevant receptors and magnitude and therefore the significance of these effects has not been provided. The ExA therefore considers that the applicant's assessment has adequately reported the significance of these effects.

BMV land during construction

3.4.70. NE commented that the applicant's determination of the amount of BMV land disturbed during construction was too low at 19.4ha. This figure considered only the construction elements that would remain in place during the operational lifetime of the proposed development, and did not account for construction compounds, access tracks (13.4ha BMV) and cable routes (95ha BMV). NE considered that whilst these effects would be of a temporary nature, there was the potential for permanent adverse effects to soil resource and agricultural land quality [RR-154] [REP1-055].

3.4.71. In response, the applicant advised that its assessment was undertaken by suitably qualified surveyors, in line with NE guidance. The assessment

considered the amount of land that would be temporarily disturbed during construction, temporarily for the operational phase of the proposed development, and permanently. The oSMP would provide robust mitigation for land disturbed [REP1-065].

3.4.72. At ExQ1 Q3.1.1 [PD-008], the ExA asked NE if it considered that this matter could lead to implications in terms of significant effects that had not been reported by the applicant, and were that to be the case, if any further mitigation would be required.

3.4.73. In response, NE advised that although the construction impacts would be of a temporary nature, there would remain the potential for permanent adverse effects on soil resources and agricultural land quality across a much wider area than that presented. Notwithstanding, it did not consider that any significant additional effects would arise from this larger area of disturbance that had not already been assessed, and it did not consider that any further or additional mitigation was required [REP2-127].

3.4.74. NE noted in the final signed SoCG with the applicant that it considered the matter to be agreed as the outcome would be unchanged. It also highlighted the importance of presenting the full extent of potential effects in the absence of mitigation [REP6-048].

ExA's consideration

3.4.75. The ExA considers the applicant to have adequately assessed the effects of construction, and the figure of 19.4ha presented to be appropriate. However, the ExA does consider that a clearer presentation and distinction between the assessment of temporary disturbance and permanent loss of BMV land, including with and without mitigations, would have been more helpful in understanding the effects of the proposed development.

3.4.76. With regards to the disturbance of soil during construction, the ExA has considered the applicant's explanations concerning the method of installation for construction compounds, access tracks, and cable routes. As there would be no permanent sealing of this land (via, for example, a concrete foundation), and the soil would be handled and stored in accordance with the provision set out in the oSMP, the ExA accepts the applicant's position that soils disturbed during construction would be capable of being restored after construction.

Economic Impacts and food production

3.4.77. Concerns were raised around the economic impacts from the loss of BMV land by NSDC [RR-156], [REP1-075] and several other IPs [REP1-109, RR-025, RR-049, RR-101]. These concerns included comments on the implications for food security.

3.4.78. These concerns were explored during ISH1 [EV3-001, EV3-003] and at ExQ1 Q3.1.7 [PD-008]. NSDC explained that low intensity sheep grazing on grade 2 land would not be a substitute for the economic loss from cereal and other crops not being grown on that land. Sheep grazing would not constitute

agricultural production. Furthermore, it considered BMV to be the most flexible land, and the effects of the loss of cereal and crop production would be felt most significantly on this land. Therefore, only grade 3a or grade 3b land should be used for the proposed development due to the long-term loss for food production from using grade 2 land [REP1-068] [REP2-120].

3.4.79. At ISH1 concerns were raised that one of the largest crops grown in the area was sugar beet, and that a major factory in Newark relies upon this crop for production. The ExA requested that the applicant consider any implications from this and submit its analysis into the examination. This was provided within the applicant's post-hearing note [REP1-068].

3.4.80. Other IPs noted concerns around the reduction in food production levels and the effects on farm businesses [RR-049, REP1-072].

3.4.81. The applicant's position on these concerns was set out in [REP1-065], [REP2-116] and at ISH1. It considered that:

- as the BMV land within the Order limits would consist of mostly cereals and bread crops, there would not be any significant impact on food production due to the small yield difference between ALC grades 2 and 3 land for those types of crops
- grazing under solar panels is a viable and established form of agriculture, even if some early solar schemes had low uptake of grazing under the panels, noting that the panels were too low to allow grazing in earlier schemes
- on a national and regional basis, the implications of the proposed development on arable crop production would be negligible, at less than 2000 tonnes per annum (when set against a UK production of nearly 20 million tonnes in 2024)
- whilst it understood concerns about food security, they should be considered in the context of food production and land availability in England and the UK
- the amount of sugar beet production affected would be minimal, being a proportion of a maximum of around 50 ha of arable land, on which some sugar beet may periodically be grown on rotation. This would be minimal when set against the Department for Environment, Food and Rural Affairs figures for the areas used in Nottinghamshire and Lincolnshire to grow sugar beet (3,824ha and 18,433ha respectively)

ExA's consideration

3.4.82. Food production is not a matter for examination. However, the ExA's view is that it is reasonable to consider this matter as part of the impacts on the local economy and has therefore considered the arguments put forward in this context.

3.4.83. The applicant has assessed the effects of the proposed development on farming business and farming as an economic activity. Consideration is also given to the implications for national food production. The effects on local farming business, the wider local economy, and food production are

considered to be minimal and not significant. The ExA has no reason to disagree with this assessment.

3.4.84. Having considered all of the arguments put forward, the ExA is satisfied that whilst there would be a loss of BMV land and a small loss of associated food production, the economic impacts on farming and national food production are likely to be minimal.

3.4.85. Nonetheless, the ExA notes NDSC's position regarding the BMV land being the most flexible type of agricultural land. Whilst the applicant has stated that sheep grazing under solar panels would be a viable and established form of agriculture, the ExA does not consider that this would be a replacement for the types of agricultural and farming activities that would have otherwise been undertaken on the same land. The ExA therefore considers this to be a negative effect.

CONCLUSIONS

3.4.86. Having considered the evidence submitted into the examination and the applicant's assessment of effects with regards to agricultural land, the ExA considers that the proposed development would be in general accordance with the provisions set out in section 5.11 of EN-1, and section 2.10 of EN-3.

3.4.87. The ExA is satisfied that the assessment of effects, both in isolation and cumulatively, is adequate. The approach to site selection is suitable, noting that the applicant has made appropriate use of the MAFF maps, in combination with undertaking its own field surveys, both in order to inform site selection and undertake micro siting where appropriate. In this regard, the provisions relating to assessment set out in EN-3 have been met.

3.4.88. EN-1 and EN-3 include a preference for development of non-agricultural land over agricultural land, and when unavoidable, for development of agricultural land to be directed towards land of lower quality.

3.4.89. The ExA is satisfied that the applicant has demonstrated that they have sought to avoid BMV land when establishing the Order limits for the proposed development, and that an adequate process to this end was followed. The ExA considers that the applicant has applied the mitigation hierarchy to avoid effects where possible.

3.4.90. With regards to the mitigation and control measures for the handling of soils set out in the oSMP, the ExA considers these to be appropriate. The ExA is satisfied that these measures would minimise disturbance to soils during construction and would enable disturbed soils to be restored to the same ALC grade after construction. The oSMP would be adequately secured through requirement 20 of the recommended DCO in Appendix A.

3.4.91. Nonetheless, the proposed development would be located on a total of 1,093 ha of BMV land, which would be unavailable for the 40-year operation of the proposed development. Whilst this loss would be temporary and reversible, and the subsequent economic and nationwide food-production impacts are

likely to be minimal, the ExA's view is that this represents a large quantity of BMV land which would not be available for agricultural purposes. Whilst sheep grazing would be encouraged as an agricultural use, there would be a loss of flexibility with regards to the land, and this would have a negative overall effect. The ExA considers that this could have been acknowledged in the applicant's assessment of effects on farm businesses, notwithstanding that it would be unlikely to change the conclusions therein.

3.4.92. With regards to the cumulative effects of the proposed development, the ExA considers that the applicant's assessment is adequate. The ExA accepts the arguments put forward by the applicant that the combined total of BMV land permanently and temporarily lost due to the cumulative developments considered would represent a very small amount of land in the national context, and that the effects would be not significant. Nonetheless, the ExA acknowledges the concerns put forward by NSDC regarding the local context and considers that the cumulative loss of BMV land would still represent a large quantity of land not available for agricultural uses. This would therefore have a negative overall effect and could have been more clearly described at a local level in the applicant's assessment.

3.4.93. As initially assessed by the applicant, 4.5ha of BMV land within the Order limits would be permanently lost. However, the ExA considers that a further 22.4ha of this land would be permanently lost due to the woodland planting required for biodiversity mitigation and enhancement, leading to a total of 27.9ha of BMV land being permanently lost. Following the methodology and logic of the applicant's assessment, and as advised by the applicant itself, this would mean a major and significant adverse effect.

3.4.94. It is for the above reasons that in respect of agricultural land matters, the ExA therefore attributes moderate negative weight against the Order being made.

3.5. BIODIVERSITY AND ECOLOGY

INTRODUCTION

3.5.1. This section considers the effects of the proposed development on biodiversity and ecology, including the enhancements proposed by the applicant.

3.5.2. In its consideration of the effects on agricultural land, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 4.6 'Environmental and Biodiversity Net Gain', section 4.7 'Criteria for good design for Energy Infrastructure', and section 5.4 'Biodiversity and Geological Conservation'
- the NPS for Renewable Energy Infrastructure (EN-3) in particular section 2.10 'Solar Photovoltaic Generation'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters.

THE APPLICATION

Environmental Statement

3.5.3. This section considers the effects of the proposed development on biodiversity and ecology. It does not consider Habitats Regulations Assessment (HRA) matters which are dealt with in chapter 4 of this recommendation report.

3.5.4. An assessment of the potential impacts of the proposed development on ecology is provided in the Environmental Statement (ES) Chapter 8 Ecology and Biodiversity [APP-051]. This chapter was updated throughout the examination. The final version was revision 5 [REP6-019].

3.5.5. The assessment is supported by a number of baseline studies, which include the following:

- Ecology and Biodiversity Consultation [APP-214]
- Ecology and Biodiversity Designated Sites Baseline [APP-215]
- Habitats and Vegetation Baseline [APP-216]
- Breeding Birds Baseline [APP-217]
- Wintering Birds Baseline [APP-218]
- Bats Baseline [APP-219]
- Great Crested Newts Baseline [APP-220]
- Otter, Water Vole, and White-Clawed Crayfish Baseline [APP-221]
- Other Notable and Protected Species [APP-222]
- Badger Baseline [Confidential] [APP-223]
- Breeding Birds Baseline [Confidential] [APP-224]
- Electromagnetic Fields and Fish [APP-227]

3.5.6. In addition, the applicant undertook an arboricultural impact assessment (AIA) [APP-225], and a Biodiversity Net Gain (BNG) assessment, [APP-226].

3.5.7. An outline Landscape and Ecological Management plan (oLEMP) [APP-201] was updated during the examination with the final version being revision 7 [REP6-028].

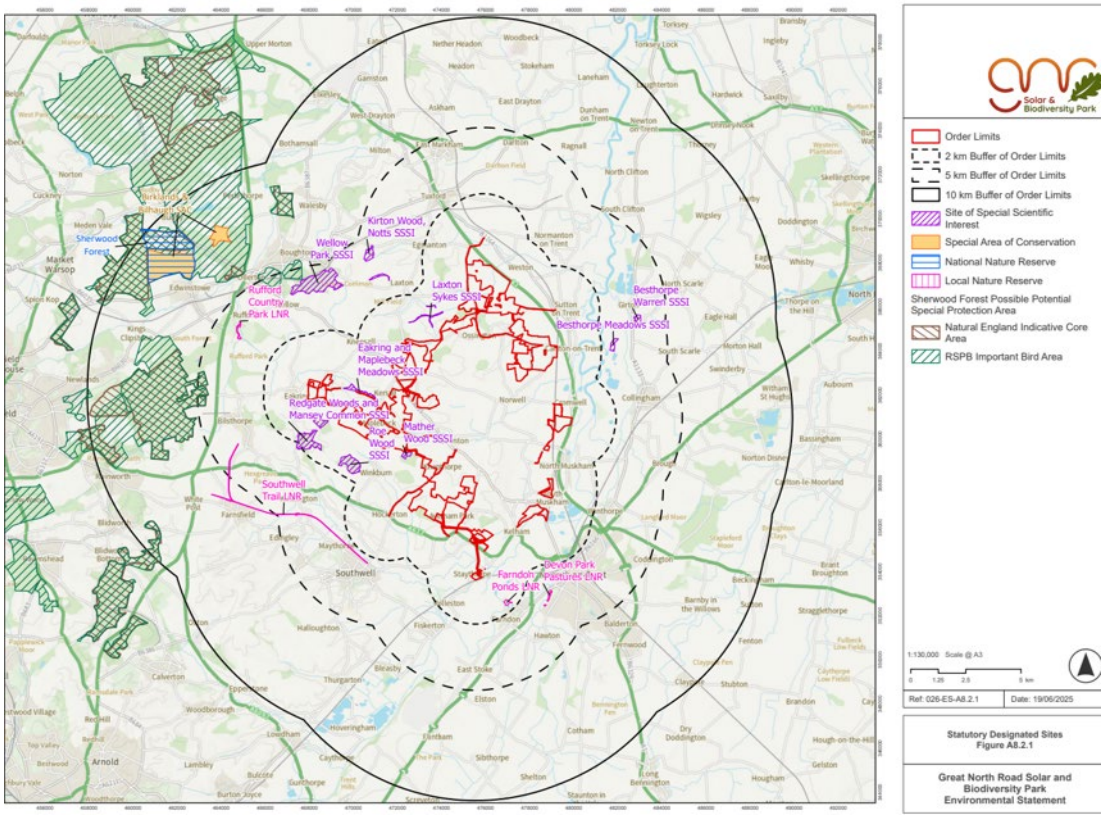
Baseline

3.5.8. The biodiversity and ecology study area is defined by:

- a 30km buffer around the Order limits for international sites, including Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites
- a 5km buffer around the Order limits for national sites, including Sites of Special Scientific Interest (SSSI) and National Nature Reserves (NNR)
- a 2km buffer around the Order limits for locally designated sites, including Local Nature Reserves (LNR) and Local Wildlife Sites (LWS)
- a 2km buffer around the Order limits for the study of all plants and species likely to be included within the assessment

3.5.9. The biodiversity and ecology study area is shown in Figure 9 below:

Figure 9: Ecology and biodiversity study area



Source: Figure A8.2.1 [APP-215]

3.5.10. The study area for the assessment of cumulative biodiversity and ecology effects is defined by a 10km buffer around the Order limits.

3.5.11. The applicant has undertaken a number of ecological surveys in order to establish a baseline for the assessment of effects. These surveys were undertaken between 2022 and 2025 and included designated sites, habitats and vegetation, and notable and protected species (including birds).

Methodology

3.5.12. The applicant's assessment of effects was undertaken following the Chartered Institute of Ecology and Environmental Management (CIEEM) 'Guidelines for Ecological Impact Assessment'. The assessment considers a number of ecological features within the study area which were defined as important ecological features (IEF). These are identified in Table 8.7 of ES Chapter 8 [REP6-019], and comprise the following:

Habitats

- Birklands and Bilhaugh SAC
- Sherwood Forest possible potential (pp) SPA
- Eakring and Maplebeck Meadows SSSI
- Mather Wood SSSI
- Laxton Sykes SSSI
- Sherwood Forest NNR
- local wildlife sites
- lowland mixed woodland
- native hedgerow
- ponds
- rivers and streams

Birds

- breeding birds
- wintering birds

Species

- bats
- great crested newt
- grass snake
- otter
- water vole
- badger
- fish

3.5.13. The effects of construction, operation, and decommissioning of the proposed development on these IEFs are considered as part of the applicant's assessment. The effects assessed include the potential for permanent or temporary habitat loss or disturbance, habitat fragmentation or change, direct harm or disturbance to animals, attraction and deterrence of animals, and changes to prey abundance and distribution.

3.5.14. The applicant considers effects to be adverse and significant where there would be the potential for the proposed development to undermine the

conservation status or objectives of an IEF. Effects are considered to be beneficial and significant where they have the potential to support the conservation status or objectives of an IEF.

Mitigation and enhancement

3.5.15. The applicant proposes a number of embedded measures that would reduce the impact of the proposed development on ecology and biodiversity. These measures are incorporated as part of the project design and outlined in section 8.6 of ES Chapter 8. They include:

- the avoidance of high-value features, such as watercourses, trees, and designated sites
- the phasing of the construction programme over 24 months in order to reduce the magnitude and extent of effects resulting from concurrent operations
- a reduction in the negative impacts associated with arable farming activities as a result of the operation of the proposed development
- the sensitive design of watercourse crossings to minimise effects
- the sensitive design of lighting (where required) to minimise impacts to bats and with reference to the Institute of Lighting Engineers guidance
- the design of perimeter fencing to allow for the movement of terrestrial animal species where appropriate
- the design and construction of passing places on public roads in less sensitive locations

3.5.16. Measures to avoid or reduce the risk of adverse effects arising from the construction, operation, and decommissioning activities of the proposed development are set out in a number of specific management plans. These include:

- an outline Construction Environmental Management Plan (oCEMP) [REP4-017], which also includes a Construction Ecological Management Plan (CEcMP) containing measures to avoid and reduce potential adverse ecological effects that could not be achieved through the other measures in the oCEMP
- an outline Operational Environmental Management Plan (oOEMP) [REP6-035].
- an outline Decommissioning and Restoration Plan (oDRP) [REP4-021], which also includes a Decommissioning Environmental Management Plan
- an outline Soil Management Plan [REP3-065]
- an oLEMP [REP6-028]

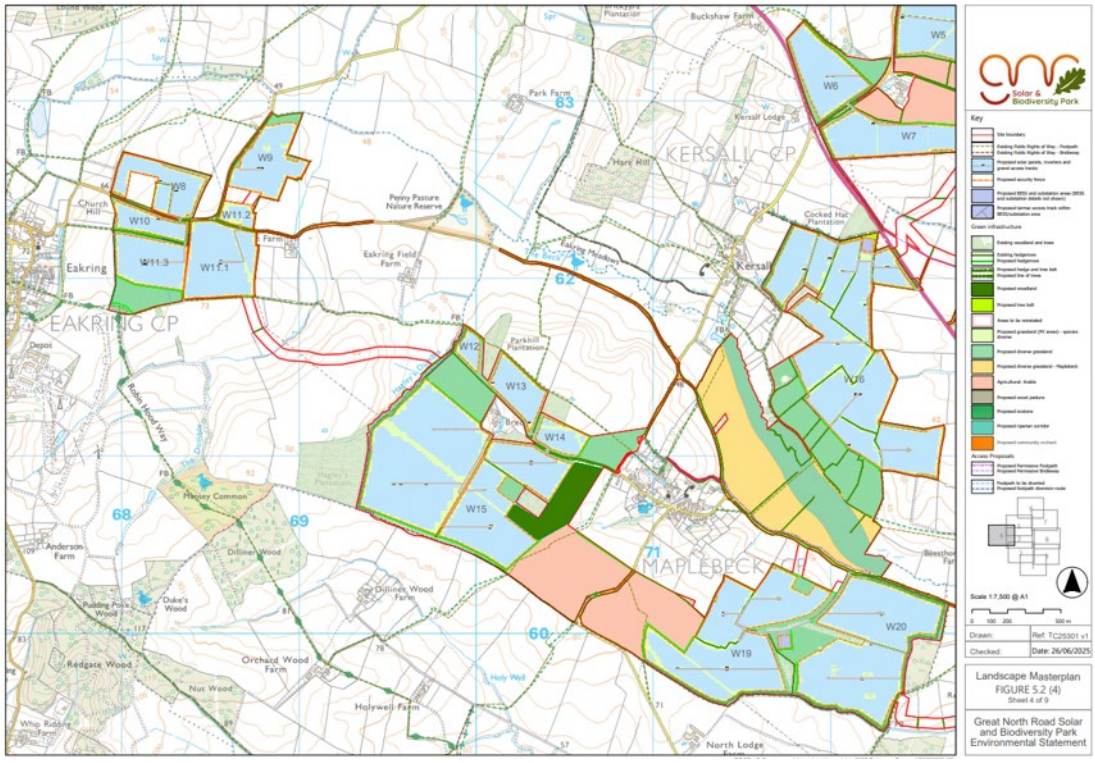
3.5.17. The proposed development would include a number of enhancement measures that would contribute to the delivery of biodiversity net gain (BNG). These would be delivered via the oLEMP [REP6-028] and [APP-031]. This would set out how these measures would be delivered and maintained. It would be secured via requirement 8(1) of the draft development consent order (dDCO) [REP6-004]. The measures would include the following:

- habitat restoration and enhancement: to improve the condition of habitats, and increase their value to other IEFs
- habitat creation: creation of new habitats of greater value than those they replace
- landscape connectivity: improvement of landscape connectivity for a range of ecological features, notably woodlands and riparian corridors and the wildlife they support
- visual screening: creation or modifying of habitats to provide visual screening of the proposed development
- flood management: natural flood management solutions
- species mitigation: compensation and enhancement for a range of IEFs including habitat creation and enhancement and features such as bird and bat boxes
- woodland creation: the creation of 31ha of new woodland, 22ha of woodland ecotone and 50km of new hedgerows/ hedge and tree belt

3.5.18. The oLEMP also sets out a number of targets related to the delivery of BNG, with the applicant aiming to deliver BNG of at least 40% in area-based habitat units, at least 17% in hedgerow units, and at least 10% in watercourse units. This would be secured under requirement 8(2) of the dDCO.

3.5.19. A Landscape Masterplan [APP-030] was developed by the applicant to complement the oLEMP and contained and summarise the mitigation and enhancement features set out in the oLEMP. An extract is shown in Figure 10 below.

Figure 10: Extract from landscape masterplan



Source: Figure 5.2(4), [APP-030]

Assessment of likely significant effects

3.5.20. A summary of the assessment of effects on all IEFs is provided in Table 8.12 of ES Chapter 8 [REP6-019].

3.5.21. No significant adverse effects are identified to any receptors through the assessment undertaken.

3.5.22. A range of non-significant adverse effects are identified for some habitats (hedgerows and trees) and animals (fish, bats, otter and water vole, and breeding birds). These adverse effects would mostly arise from disturbance and habitat loss during construction, and would be short-term, reversible, and low magnitude. They would be mitigated via measures and good practice guidance set out in the oCEMP, CEcMP, oLEMP, and DRP.

3.5.23. Beneficial and significant effects are identified for local wildlife sites, habitats and breeding birds, as well as a range of beneficial, non-significant effects for other features during the operational phase. These effects would primarily arise through the introduction of landscape-scale management of a large area of habitats, as well as from the direct effects of the introduction of new woodland, ecotone areas, and riparian corridors.

3.5.24. No significant, cumulative effects on any of the IEFs have been identified by the applicant's assessment of effects.

ISSUES CONSIDERED DURING THE EXAMINATION

3.5.25. Concerns were raised by Newark and Sherwood District Council (NSDC) on a number of issues in its relevant representation (RR) and LIR [RR-156], [REP1-075]. These related to the adequacy of the baseline habitat surveys, the assessment methodology, the aggregation of habitats, the underlying assumptions in the applicant's calculation of its anticipated BNG uplift, effects on birds and great crested newts, and the impacts of water crossings on watercourses.

3.5.26. Agreement was reached on all of these issues during the course of the examination as set out in the final signed statement of common ground (SoCG) [REP6-042].

3.5.27. Concerns were raised by Nottinghamshire County Council (NCC) in its RR [RR-166] and LIR [REP1-078], and the Environment Agency (EA) in its RR [RR-054]. These sought further clarification with regards to the oLEMP and impacts on some species, as well as agreement of further measures to be included in the oCEMP and CEcMP with regards to potential invasive species in water courses.

3.5.28. Agreement was reached on these issues during the examination, and all matters were recorded as agreed in the final signed SoCG between the applicant and NCC [REP6-040] and between the applicant and the EA [REP5-032].

3.5.29. Nottinghamshire Wildlife Trust (NWT) made a number of comments in its RR [RR-167] concerning specific points with regard to the measures set out in the oLEMP and oCEMP. These matters were addressed through discussions during the examination and noted as agreed in the final signed SoCG between NWT and the applicant [REP5-036].

3.5.30. Natural England (NE) commented in its RR [RR-154] that it was awaiting submission from the applicant of a draft protected species licence for water vole. This was provided during the examination and all matters regarding designated sites, protected species, and BNG were recorded as agreed in the final signed SoCG with NE and the applicant [REP6-048].

3.5.31. The ExA sought a number of clarifications during the examination where some matters were unclear, or where statutory parties or IPs had raised specific concerns. These matters relate to:

- the approach to mitigation and enhancement
- ancient woodland
- the assessment methodology and effects
- the BNG assessment
- the livestock grazing regime proposed by the applicant
- general concerns from IPs

The approach to mitigation and enhancement

3.5.32. The ExA examined the applicant's approach to mitigation and enhancement set out in ES Chapter 8 and the oLEMP, seeking to understand if a clearer distinction between the two approaches was required to ensure that the proposed mitigation and enhancement measures would be compliant with the mitigation hierarchy, as set out in paragraph 4.6.10 of EN-1. At ISH1 [EV3-001, EV3-003] the ExA asked the applicant to explain the difference between the mitigation and enhancement elements of the measures set out in ES Chapter 8 and the oLEMP.

3.5.33. The applicant responded that all of the intended habitats would provide some sort of enhancement, but only some would provide mitigation, and it therefore would be difficult to completely disentangle mitigation from enhancement. The applicant confirmed that enhancement would be effectively delivered as part of its approach to mitigation, whereas mitigation measures would be further developed in order to deliver enhancement. The applicant also noted that this approach was recognised as good practice [REP1-068].

3.5.34. The ExA addressed a second written question (ExQ2) Q4.2.1 [PD-008] to NSDC, NCC and NE asking for comment on the applicant's position set out during ISH1. NE responded that enhancement can be delivered alongside mitigation so long as the full mitigation requirements are fulfilled. NE agreed with the applicant that this approach represents good practice [REP4-068]. NCC confirmed that it had no further comment and was satisfied with the applicant's approach [REP4-063]. NSDC commented that it was important to maintain a distinction between mitigation and enhancement and to not conflate them, but that it can be challenging to separate the two approaches

as compensation can address effects where mitigation cannot prevent significant harm [REP4-062].

ExA's consideration

3.5.35. The ExA has considered the applicant's position and the comments from NE, NCC, and NSDC, as well as the provisions set out tin the oLEMP, oCEMP and CEcMP. The ExA is satisfied with the applicant's approach to mitigation and enhancement and agrees that it can be challenging to disentangle the two. The ExA also acknowledges the view of NE that the applicant's approach to mitigation and enhancement represents good practice.

3.5.36. Furthermore, through the measures set out in the oCEMP, CEcMP and oLEMP, the ExA is satisfied that the mitigation hierarchy has been applied, and that mitigation has been applied as distinct from enhancement where necessary. Where enhancement is intended for the delivery of BNG, the ExA considers the applicant's approach to be consistent with paragraph 4.6.10 of EN-1.

Ancient Woodland

3.5.37. Comments were made by the Forestry Commission (FC) relating to buffer zones around ancient woodland in respect of standing advice published by the FC [RR-056] [REP1-080]. The FC considered that whilst the applicant had included a minimum separation distance of 15m between ancient woodland and areas of the proposed development undergoing construction works, there could be a need for a larger buffer distance where effects may extend beyond this distance. The FC also noted that buffer distances should include the potential effects of air quality on ancient woodlands and should contribute to wider ecological networks with semi natural habitats.

3.5.38. The applicant's position was that it had taken the FC's standing advice into consideration from the early stages of design for the proposed development, and that whilst 15m was a minimum buffer distance, there was provision in the oCEMP to increase this distance if a tree was identified as ancient or veteran. The applicant explained that the potential effects of air quality on ancient woodlands were assessed as not significant, and that new ecotone would be planted as a buffer where new woodland was to be planted near existing woodlands [REP1-065].

3.5.39. In the ExA's first written questions (ExQ1) Q4.1.5 [PD-008], the FC was asked to provide further detail on the potential for deterioration of ancient woodland in the vicinity of the proposed development, and if it considered that any such deterioration could constitute a significant effect. No response was received.

3.5.40. The ExA also addressed part of question ExQ1 Q4.1.5 to the applicant, asking if it had considered larger buffer distances as suggested by FC. The applicant responded that it would implement a process post-consent to identify where large buffer distances would be appropriate, as was set out in its AIA [REP2-117], [APP-225]. The applicant also noted that the oCEMP includes a commitment to increase the size of the default 15m root protection

area if a tree were to be identified as ancient or veteran, and that it considered that there would be no loss or deterioration of ancient woodland with the measures set out in the oCEMP and the AIA [REP2-116] [REP2-117].

ExA's consideration

3.5.41. The ExA notes FC's comments regarding the importance of buffer distances and the avoidance of impacts on ancient woodland, as well as the scale and type of the proposed development meaning that a larger buffer distance than 15m may be necessary. The ExA also acknowledges the FC's comment that its standing advice on buffer distances may change at a future date.

3.5.42. Having considered the applicant's position, as well as the provisions set out in the AIA and the oCEMP, the ExA is satisfied that the 15m buffer distance would be a minimum distance and that the applicant would implement larger distances where necessary. The AIA also notes that the buffer zone for any tree of larger than one metre in diameter would be evaluated individually.

3.5.43. Whilst the majority of works for the proposed development would take place outside buffer zones there are two incidences where there would be incursions into the 15m buffer, one in relation to an ancient woodland, the other a veteran tree. The ExA is satisfied that the circumstances of these cases would be appropriately managed, and that more generally the oCEMP would enable control over works with the potential to have an impact on mature trees and woodland. The ExA therefore considers the applicant's approach to be consistent with the provision set out in paragraph 5.4.32 of EN-1.

Assessment methodology

3.5.44. Concerns were raised by NSDC with regards to the applicant's assessment methodology [RR-156, REP1-075]. NDSC considered that the assessment lacked clarity and did not provide a transparent overview of how the effects on IEFs had been assessed, that the aggregation of habitats (broadleaved woodland, native hedgerows, rivers and streams and ponds) did not represent a robust approach, and that the conclusion of no significant effects on IEFs had not been sufficiently justified. This position was also reflected in the initial SoCG [REP1-051].

3.5.45. The ExA asked NSDC if it considered that the significance of effects could have been underreported by the applicant, if it considered that aggregated habitats should have been assessed separately, and if it considered the applicant's assessment to have been robust (ExQ1 Q4.1.2) [PD-008]. NSDC responded that it did consider there to be a potential for effects to have been underreported due to the reasons outlined above, including what was considered to be the applicant's limited survey effort for certain habitats, which could have underestimated their value. In addition, the aggregated habitats should have been assessed separately to allow for more accurate reporting of effects. For these reasons, NSDC did not consider the applicant's assessment to be robust [REP2-120].

3.5.46. At ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], the ExA invited NSDC to further expand upon its concerns related to the assessment methodology, and to explain how determinant these concerns could be in terms of the underreporting of effects. NSDC explained that the concerns were related to the description and presentation of mitigation within the assessment, whereby some of the mitigation that was treated as 'embedded' within the assessment should be more accurately considered as additional mitigation, using farmland birds as an example. More specifically, if an effect could be significant pre-mitigation, some of the mitigation elements that the applicant considered to be 'embedded' should have been treated as 'additional' [REP3-101, REP3-106].

3.5.47. However, whilst NSDC's concern was the potential to underestimate impacts and distort the significance of effects prior to the implementation of additional mitigation, it did not consider that this would change the overall outcome of the assessment. NSDC also explained that a similar consideration was behind its initial concerns with regards to the aggregation of habitats, and that most of the initial concerns raised on these matters were now addressed [REP3-101, REP3-106].

3.5.48. This position was reflected in the SoCG and updates to the assessment provided at each deadline (D). Updates to ES Chapter 8, including to Table 8.12, were provided at D2, D3, D5 and D6 [REP6-019] to incorporate further discussions with NSDC. These matters were recorded as agreed between the applicant and NSDC in the final signed SoCG [REP6-042].

ExA's consideration

3.5.49. Having considered the updated assessment provided by the applicant, and the successive representations from NSDC, the ExA is satisfied that the applicant's assessment methodology with regards to ecology and biodiversity effects is sufficiently robust. The ExA considers that there is adequate information within ES Chapter 8 to understand the significance of effects on IEFs and how these have been assessed by the applicant, and that the assessment meets the requirements set out in EN-1, paragraph.5.4.17, and EN-3, paragraphs 2.10.76 to 2.10.80 regarding the approach to assessment.

BNG Assessment

3.5.50. In its LIR NSDC raised concerns that the limited sampling of habitats of higher ecological importance may have led the applicant to undervalue habitats within the BNG assessment, and that further justification was required from the applicant with regards to the condition scores used in the assessment [REP1-075].

3.5.51. In response to ExQ1 Q4.1.3 [PD-008] about the potential for these concerns to affect the BNG assessment, NSDC commented that this could mean a change in the outcome of the BNG assessment, with potential for a reduced uplift in BNG gain, although it would be difficult to comment on the magnitude of any change [REP2-120].

3.5.52. An update was provided by NSDC at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], where it advised that further information had been provided by the applicant in the BNG assessment with regards to where detailed condition assessments were undertaken. NSDC noted that the dDCO requirement 8 sets out that updated BNG survey information must be provided post-consent. This meant that even if the baseline value of the habitat changed slightly after post-consent surveys, the conclusions and overall BNG net gain outcome would not change significantly [REP3-101].

3.5.53. The BNG assessment was updated by the applicant during the examination to incorporate further detail with regards to the condition scores and habitat value. The applicant noted in its closing statement that it had revised its BNG calculation downwards for area-based habitat units, generating an uplift of 41.69%, instead of the 60.7% uplift originally calculated. This was to reflect NSDC's position that providing grassland habitat units of a 'moderate' quality under and around the solar PV panels might be unrealistic, and that a mix of 'poor' and 'moderate' quality units would be more appropriate [REP6-064].

3.5.54. A final revision of the BNG assessment was provided [REP6-037] with the revised uplift percentages. Requirement 8(3) of the dDCO was updated to change the uplift in area-based habitat units from 60% to 42% at D2 [REP2-005], and then 40% at D5 [REP5-002] to reflect further refinement of habitat condition scores. This matter was recorded as agreed between the applicant and NSDC in the final signed SoCG [REP6-042].

ExA's consideration

3.5.55. The ExA is satisfied that the proposed development would deliver BNG, that this would be secured adequately through requirement 8(3) of the recommended (r)DCO (Appendix A) and the enhancement measures set out in the oLEMP. Having considered the comments raised by NSDC, and the subsequent revisions to the BNG assessment, the ExA has no further or residual concerns with regards to the applicant's assessment assumptions and condition surveys.

Grazing Regime

3.5.56. In its RR, the NWT advised that it strongly advocated for a conservation grazing regime to be implemented by the applicant. This was in reference to the grazing of livestock that would be permitted under the solar PV modules during the operation of the proposed development. NWT further added that it considered that a conservation grazing regime would maintain structural diversity within grassland, and that this would benefit invertebrates during the winter [RR-167].

3.5.57. At ISH1 [EV3-001, EV3-003] the ExA asked for further clarity on the type of conservation regime envisaged by the applicant, and if details of grazing regimes could be expanded and incorporated into the oLEMP. The applicant confirmed that this was part of ongoing discussion with NWT and that the issue would be progressed through the examination and SoCG [REP1-068].

3.5.58. In the final signed SoCG with NWT, the applicant confirmed that low-density and rotational grazing was proposed, in keeping with conservation principles. This would create a mosaic in the grassland structure. Further details would be incorporated into the oLEMP post-consent. This was noted as agreed in the final signed SoCG with NWT [REP5-036].

ExA's consideration

3.5.59. The ExA has considered the comments of NWT and the applicant, and notes that the final oLEMP clearly identifies conservation grazing regimes with regards to sheep grazing. The ExA is satisfied that the grazing regime proposed by the applicant would be appropriate.

General concerns from IPs

3.5.60. A number of general concerns were raised by IPs with regards to ecology and biodiversity, wildlife and habitats, and the mitigation and enhancement measures. These are considered briefly in turn.

3.5.61. Carlton-on-Trent Parish Council raised a number of concerns, [RR-025, REP1-072, [REP2-118]. These principally related to:

- the accuracy of baseline survey information and the importance of considering local knowledge, with a particular focus on birds, including the presence of a pair of tawny owl chicks and reported local sitings of lapwing and buzzards, which it considered should have been included in the applicant's baseline surveys
- the vicinity of the proposed battery energy storage system substation next to Carlton Wood LWS

3.5.62. In response to these concerns the applicant advised that:

- a range of baseline studies was undertaken by suitably qualified, professional ecologists, following good practice methods, to establish the status and distribution of habitats and notable and protected species within and around the Order limits [REP1-065]
- its breeding birds baseline surveys followed good practice and used a standardised and repeatable method to determine the breeding status and location of birds. The reported local observations of bird activity would be unlikely to correspond to the breeding status and territorial locations of species confirmed by the baseline studies [REP4-059]. Furthermore, provision for pre-construction and pre-commencement surveys would be included within the oCEMP. This would contain measures to establish locations of sensitive species and necessary precautions, including for Schedule 1 bird species [REP3-101]
- an assessment of effects was undertaken for Carlton Wood LWS, and no significant effects were identified. The land immediately surrounding Carlton Woods LWS would be converted from arable land to grassland and ecotone, benefitting the LWS by reducing the diffuse effects of agriculture, reducing 'edge effects', and increasing woodland connectivity [REP1-065].

3.5.63. Concerns were also raised by several IP's [RR-078, RR-101, [RR-214], which were themed around the following:

- the mitigation and enhancement measures and BNG uplift not being sufficient to offset any adverse effects to habitats
- that the Nottinghamshire Local Nature Recovery Strategy (LNRS) was undermined and ignored in the proposed development
- the long-term management of the proposed trees, hedgerows and watercourses, and what would happen upon decommissioning
- construction effects

3.5.64. In response the applicant advised that [REP1-065]:

- extensive biodiversity and landscape enhancements and mitigations were proposed, including 55ha dedicated solely for this purpose, and which would contribute to securing biodiversity net gains for habitats, hedgerows and watercourses
- the approach to the BNG was informed by the draft LNRS for Nottinghamshire, as well as the NSDC Mandatory Biodiversity Net Gain Strategic Significance guidance
- the oLEMP [REP6-028] outlined how the mitigation and enhancement identified would be implemented and subsequently maintained and monitored to ensure its effectiveness. Monitoring would include a feedback loop to ensure remedial management if necessary
- no significant effects were identified to ecology and biodiversity receptors for the construction phase. Adverse effects have been avoided or reduced through sensitive design, embedded mitigation, and additional measures set out in the oCEMP

3.5.65. With regards to decommissioning, at ISH1 [EV3-001, EV3-003], the applicant explained that the assessment assumed that most habitats would return to baseline conditions, while some habitats with a higher degree of permanence, such as woodland, would remain. Existing retained habitats would be safeguarded through the DRP.

ExA's consideration

3.5.66. The ExA has considered and acknowledges the submissions and comments made from various IPs during the examination with regards to ecology and biodiversity matters.

3.5.67. The ExA is satisfied that the baseline studies and survey information have been undertaken by suitably qualified professionals, have followed good practice guidance, and that they are therefore adequate. Whilst there may have been some sitings of birds not included within the surveys, the ExA agrees with the applicant that this would be unlikely to correspond to the breeding status and locations of species noted in the applicant's surveys.

3.5.68. The ExA considers construction effects to have been adequately assessed and is satisfied with the applicant's conclusion of no significant effects.

3.5.69. With regards to the effects on Carlton Wood, the ExA is satisfied that these have been appropriately assessed by the applicant and that measures included within the oCEMP would mitigate any adverse effects. Given the provision with the oCEMP for increased buffer zones to ancient trees, and the planting of ecotone as a buffer to woodland (outlined in the oLEMP), the ExA considers that the effects on Carlton Wood have been adequately considered and mitigated.

3.5.70. The ExA is satisfied that mitigation and enhancement measures outlined in the oLEMP would mitigate the adverse effects identified and provide a quantifiable uplift in BNG. This is supported by the BNG assessment. The oLEMP confirms that the LNRS would be considered in post-consent design iterations

3.5.71. The ExA is satisfied with the management and maintenance prescriptions outlined in the oLEMP for the various features described. These would apply for the duration of the operation of the proposed development and would include suitable provision for monitoring and replacement where necessary. The ExA also considers that the retention of habitats with a higher degree of permanence post-decommissioning to be appropriate. This is set out in the DRP.

CONCLUSIONS

3.5.72. The ExA is satisfied that the applicant's assessment includes adequate information to understand the potential effects of the proposed development alone or cumulatively, and that it accords with sections 4.3, 4.6 and 5.4 of EN-1. With regards to the applicant's assessment of effects on ecological and biodiversity receptors, the ExA considers this to have been undertaken in accordance with the provisions set out in section 2.10 of EN-3.

3.5.73. EN-1 paragraph 5.4.39 require the applicant to have had regard to the Environment Act. Through its own assessment calculations and via the provisions set out in the oLEMP, the applicant has outlined that the proposed development would result in a BNG increase of at least 40% in area-based habitat units, at least 17% in hedgerow units, and at least 10% in watercourse units. This would be secured through requirement 8(2) of the rDCO (Appendix A). It is therefore the ExA's view that the applicant has paid adequate regard to the Environment Act.

3.5.74. Whilst acknowledging that there would be non-significant adverse impacts on some habitats and animals during construction and decommissioning, these would be temporary and reversible. During the operational phase, the ExA considers that adequate mitigation measures would be put in place to ensure that there would be no significant residual effects. The ExA is also satisfied that the applicant has sufficiently considered mitigation measures and the mitigation hierarchy, and that the enhancement elements of the oLEMP would be delivered to compliment the mitigation elements.

3.5.75. In this regard, the ExA is satisfied that any identified effects, either for the proposed development alone or cumulatively, on biodiversity and ecology

would be satisfactorily mitigated and managed through the proposed implementation of the oLEMP, oCEMP, oOEMP and oDRP. These management plans would be certified in schedule 11 of the rDCO. They would then be secured through requirement 8(3), requirement 12, requirement 13 and requirement 19 of the rDCO (Appendix A) respectively.

3.5.76. Taking all the evidence into account, the ExA is satisfied that biodiversity and ecology matters have been adequately assessed in accordance with the requirements of EN-1 and EN-3 and the National Planning Policy Framework. The ExA notes the applicant's commitment to provide enhancement measures and that minimum levels of BNG would be secured in the rDCO. This weighs positively in favour of the proposed development and the ExA considers that this should be afforded moderate positive weight in the overall planning balance.

3.6. CLIMATE CHANGE

INTRODUCTION

3.6.1. This section considers the effects of the proposed development on greenhouse gas emissions (GHG) and its resilience to climate change.

3.6.2. The following must be given due regard in consideration of the effects of the proposed development on greenhouse gas emissions:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), particularly the relevant paragraphs of section 4 'Assessment Principles', which includes 4.10 'Climate Change Adaptation and Resilience', and section 5.3 'Greenhouse Gas Emissions'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

3.6.3. The applicant sets out its assessment of the effects of the proposed development on greenhouse gas emissions and resilience to climate change in the Environmental Statement (ES) Chapter 15 Climate Change [APP-058]. This was updated during the examination, the final version being revision 3 [REP3-026].

3.6.4. The applicant's supporting document is the Lifecycle Greenhouse Gas Evaluation [APP-285] which was updated during the examination with the final version being revision 3 [REP3-063].

Methodology – GHG Emissions

3.6.5. The applicant calculates GHG emissions, measured in tonnes of carbon dioxide equivalent (tCO2e), across the construction, operation, and decommissioning phases to ensure the whole lifecycle of the proposed development is considered. The applicant explains that this approach highlights areas likely to generate the largest amount of GHG emissions, in order to identify priority areas for mitigation.

3.6.6. The applicant states that its Lifecycle GHG Evaluation [REP3-063] uses appropriate industry benchmarks, and conservative assumptions on materials, design, assembly, earthworks and use of components to provide a robust assessment of likely GHG emissions.

3.6.7. During construction the applicant assumes the following:

- solar photovoltaic (PV) modules, PV framework, and battery energy storage system (BESS) cells would be produced in China, shipped to a port up to 240km away from the proposed development and delivered from there by heavy goods vehicles
- generators would consume 16.5 litres of fuel per day and run for 6 hours a day, 26 days a month over the 2-year construction period. Plant and

machinery would consume 5,000 litres of diesel per week across the 2-year construction period
- there would be 400 workers on-site for 2 years with each worker travelling 60km to and from site with an average of 1.5 workers per car and requiring 90 litres of water per day

3.6.8. During the operation and maintenance of the proposed development the applicant assumes the following:

- 5% of transformers, 10% of PV panels, 10% of panel supports, 150% of PV inverters, 150% of BESS inverters, and 150% of BESS cells would be replaced
- it would be supported by a single on-site warehouse having an electricity usage of 87,600 kilowatt hours (kWh) per year
- there would be 60 full time employees, with 30 attending the site on any given day, for 300 days of the year with each worker travelling 60km, with an average of 2 workers per car, and using 90 litres of water per day
- the BESS would be charged from electricity generated by the proposed development's solar PV and from the grid when there is excess, cheap electricity available
- electricity from the BESS would be supplied in preference to that from gas fired power stations and hence replace export from gas-fired generation
- solar PV 'overplanting' would be used so that more capacity would be deployed relative to the grid connection size to allow the system to more efficiently use the grid and BESS capacity available to it

3.6.9. During decommissioning the applicant assesses the GHG emissions using the same parameters as for construction, considered to be a worst-case assumption.

3.6.10. With regard to carbon avoidance during the operational lifetime of the proposed development, the applicant assumes that:

- to assess a worst-case scenario, the predicted, and rapidly decreasing, levels of carbon intensity in the grid have been applied
- the stored electricity from the BESS would be used during times of peak demand and the evening peak carbon intensity would remain fixed

3.6.11. The applicant explains that the average carbon intensity of the grid in 2024 was reported to be 0.20705 kilograms of carbon dioxide equivalent emitted per kilowatt-hour of electricity consumed (kgCO2e/kWh). A decade later in 2034, the applicant reports that it is predicted to be 0.0295 kgCO2e/kWh, representing an 86% drop in carbon intensity. The carbon intensity is a way of representing how much carbon is produced in terms of mass of CO_2 for each unit of energy generated, measured in kWh.

3.6.12. The applicant explains that no information is available to predict the rate at which the peak supply becomes decarbonised and so uses the lowest reported carbon figure for combined cycle gas turbines (CCGT) of 0.365 kgCO2e/kWh as the fixed carbon intensity value. The applicant assumes that BESS export would always displace this form of power generation as it is

used for peak generation, for example during the early evening when demand is highest.

3.6.13. The applicant assesses the significance of the proposed development's contribution to GHG emissions using Institute of Environmental Management and Assessment (IEMA) guidance, which describes five levels of significance. The applicant explains that these levels are designed to refer to the likelihood of avoiding severe climate change, aligning project emissions with a science-based 1.5°C compatible trajectory, and achieving net zero by 2050.

Methodology – Resilience

3.6.14. With regard to resilience to climate change the assessment methodology is set out by the applicant in section 15.2.2 of Chapter 15 Climate Change [REP3-026].

3.6.15. The applicant uses available data, forecast data and the IEMA guidelines to carry out the assessment using event impact and likelihood to determine significance criteria.

Assessment of likely significant effects

3.6.16. The applicant calculates the total emissions during construction, operation and maintenance, replacement and decommissioning as 2,775,205 tCO2e and the total reduction as 3,983,556 tCO2e, hence the proposed development, assuming the forecast grid decarbonisation outlined above at 3.6.11 would result in a net reduction in emissions or net benefit of 1,208,351 tCO2e.

3.6.17. The total reduction value of 3,983,556 tCO2e is reported by the applicant as being made up of:

- land use change 44,218 tCO2e
- solar PV generation 692,648 tCO2e
- BESS 3,246,690 tCO2e

3.6.18. The applicant concludes that, following the IEMA guidance, this would be a major beneficial significant effect.

3.6.19. Concluding on the matter of resilience to climate change the applicant predicts future climatic conditions would have a very low risk of affecting the proposed development as a result of the measures which have been incorporated in its design. Hence the applicant concludes that there would be no likely significant effects.

ISSUES CONSIDERED DURING THE EXAMINATION

3.6.20. Norwell Parish Council in its relevant representation (RR) [RR-163], and Norwell Solar Farm Steering Group (NSFSG) in its RR [RR-164], raised concerns about the applicant's GHG assessment:

- the amount of generation being grossly over-estimated

- the Lifecycle Greenhouse Gas Evaluation Rev 1 [APP-285] containing a large number of errors
- the applicant significantly under-reporting the CO_2 emissions caused by the construction, operation and decommissioning of the proposed development
- the proposed development would be responsible for significantly more CO_2 emissions than it would save and would add to global warming by a significant amount
- the public benefit of the proposed development being significantly exaggerated

3.6.21. The applicant responded with reference to its ES Chapter 15 Climate Change Rev 1 [APP-058] and its Lifecycle Greenhouse Gas Evaluation Rev 1 [APP-285].

3.6.22. In addition, the applicant considered that the following measures to reduce CO2 emissions during construction might be deployable:

- sourcing steel for the solar PV mounting structures from UK-based suppliers, avoiding the carbon footprint from shipping steel internationally
- sourcing steel from manufacturers that use electrical arc furnaces rather than fossil-fuel-fired furnaces
- transporting steel to site as sheet steel, which would require fewer heavy goods vehicles
- using on-site manufacturing of the sheet steel into the mounting structures, using on-site-generated solar power as the equipment for this

3.6.23. The ExA asked about the applicant's GHG assessment at ISH1 [EV3-001, EV3-003]. In particular the ExA wished to clarify whether the applicant's conclusion was secure, could be secured by way of a requirement, and how sensitive it was to potentially small changes. During the hearing the applicant's position was that:

- it is not possible to secure the forecast carbon savings through a requirement in the draft Development Consent Order (dDCO)
- the assumptions which underpinned its GHG assessment had not been peer reviewed
- the impact of other types of renewable energy sources that could meet peak demand and the effect of demand side measures as set out in the government's Clean Power 2030 Action Plan had not been considered
- if, other things remaining the same, the BESS benefit reduced by 25% the proposed development would be 'carbon neutral' rather than beneficial
- a statement of common ground (SoCG) would be progressed with NSFSG

3.6.24. In ExQ1 Q5.1.1 [PD-008], the ExA asked the applicant to provide a GHG reduction strategy which sets out the steps taken to minimise and offset emissions and which should be secured under the dDCO with reference to EN-1, paragraph 5.3.7.

3.6.25. The applicant responded [REP2-017] that emissions would be minimised through measures set out in its outline Construction Environmental Management Plan (oCEMP) [REP4-017] which is included in schedule 11 documents and plans to be certified, and secured by the schedule 2 requirements of the dDCO [REP6-004].

3.6.26. At ExQ2 Q5.2.1 [PD-011] the ExA compared NSFSG's forecast of a whole life 1.86 million(m)tCO2e disbenefit with the applicant's 1.21 mtCO2e benefit. The ExA asked the parties whether securing any specified whole life GHG emissions outcome through a requirement would be inappropriate and whether a high degree of uncertainty would remain in these predictions.

3.6.27. The applicant confirmed that its forecast benefit could not be secured by way of a requirement in its response [REP4-060] and similarly NSFSG agreed this would not be appropriate in its response [REP4-077]. Both parties agreed that such forecasts were subject to factors outside of the operator's reasonable control. NSFSG provided further data and analysis to support its position that the use of 365 $kgCO_2$/kwh for 40 years as the carbon intensity that would be displaced by the BESS export at peak times cannot be justified.

3.6.28. A number of matters were not agreed in the final signed SoCG between the applicant and NSFSG [REP5-038]. This included the view of NSFSG that the approach of using pegged, that is say a fixed value that assumes no further decarbonisation, for carbon intensity is inconsistent with the judgement by Mr Justice Sullivan in 'Rochdale' as referenced by EN-1 at paragraph 4.3.12.

ExA's consideration

3.6.29. The ExA finds that the application is consistent with the requirements set out at EN-1 section 4.10 regarding resilience to climate change.

3.6.30. The ExA considers the applicant's response, which referenced its oCEMP as a mitigation strategy during construction, to be satisfactory, and this would be secured by requirement 12 of the dDCO [REP6-004].

3.6.31. The ExA finds that the applicant's GHG assessment has accounted for the general de-carbonisation of the grid that is forecast to take place during the operational life of the proposed development and sees no reason to disagree with the rate at which this 'base load' decarbonisation is assumed to occur.

3.6.32. The ExA considers that this assumption, made by the applicant as part of the basis for its reasonable worst-case assessment of GHG emissions, is consistent with IEMA guidance and forms an important element of such an assessment.

3.6.33. The ExA finds that the applicant made some amendments to its submissions in response to representations made by NSFSG which narrowed the areas of disagreement as set out in the final SoCG. The ExA finds these amendments included some material corrections to calculations.

3.6.34. In terms of the applicant's approach to assessment and mitigation of GHG emissions, recognising the potential to take further mitigation measures during the construction of the proposed development, the ExA finds that the application is consistent with the requirements set out at EN-1 section 5.3.

3.6.35. The ExA finds that the applicant's assumption that the operation of the BESS would always displace CCGT generation for 'peak load' periods during the whole of its 40-year operational life does not take full account of the Clean Power 2030 Action Plan.

3.6.36. With regard to the Clean Power 2030 Action Plan, the ExA finds that the forecast increase in consumer led flexibility, including electric vehicle battery to grid during 'peak load' periods, would have the potential to affect the applicant's assumption that BESS power export would always displace CCGT usage during these times for the entire 40 year operational life of the proposed development.

3.6.37. With regard to consistency with EN-1 paragraph 4.3.12 and whether the applicant's overall assessment of GHG emissions represents a 'reasonable worst case'. The ExA finds there to be no:

- guidance available to forecast the rate at which 'peak load' generation could become de-carbonised during the operational life of the proposed development
- quantified method in the IEMA guidance to establish the significance of any net GHG disbenefit or benefit forecast from the proposed development
- accepted way of securing any forecast net GHG emissions in the dDCO

3.6.38. Hence, in combination with the reasonable worst-case assumption explained at paragraphs 3.6.31 and 3.6.32, the ExA finds the applicant's approach to the assessment principle of 'reasonable worst case' to be consistent with EN-1 paragraph 4.3.12.

3.6.39. With regard to the applicant's conclusion that the net GHG emissions benefit that it predicts would be a major beneficial significant effect, the ExA concludes that this would not add any positive weight to that given in section 3.2 'Need and Alternatives' of this report. The ExA considers this conclusion is consistent with other made Orders (for example the Helios Renewable Energy Project, December 2025) as it would represent a 'double counting' of a beneficial effect.

CONCLUSIONS

3.6.40. In conclusion, accounting for the measures set out in its recommended DCO, the ExA assigns neutral weight to this issue with regard to the making of the Order.

3.7. CULTURAL HERITAGE AND ARCHAEOLOGY

INTRODUCTION

3.7.1. This section considers the effects of the proposed development on cultural heritage. It includes designated and non-designated heritage assets, which in this case primarily comprise scheduled monuments, listed buildings, conservation areas, registered parks and gardens, buried archaeological remains, historic landscape areas, and historic hedgerows and boundaries.

3.7.2. In considering cultural heritage and archaeology, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.9 'Historic Environment'
- the NPS for Renewable Energy (EN-3), in particular section 2.10 'Solar Photovoltaic Generation'
- the NPS for Electricity Networks Infrastructure (EN-5), in particular section 2.2 'Factors influencing site selection and design' and section 2.9 'Applicant assessment'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.7.3. The initial version of the Environmental Statement (ES) Chapter 11 Cultural Heritage and Archaeology [APP-058] was updated during the examination, the final version being revision 2 [REP6-021]. This chapter sets out the assessment methodology, study areas, baseline conditions and the likely effects on heritage assets as a result of the construction and operation of the proposed development.

3.7.4. The ES is supported by technical appendices including:

- settings assessment [APP-255, REP3-053]
- geoarchaeological desk-based assessment [APP-251, APP-252, APP-253, APP-254, APP-256]
- geophysical survey and trial trenching results [APP-257, APP-258, APP-259, APP-260, APP-261, APP-262, APP-263, APP-264, APP-265, APP-266, APP-267, APP-268]
- outline archaeological mitigation strategy [REP4-023]
- further heritage and archaeology figures [APP-158, APP-159, APP-160, APP-161, APP-162, AS-043, REP2-039]

Scope and methodology

3.7.5. Desk-based sources including the Nottinghamshire Historic Environment Record, the National Heritage List for England, aerial photographs, National Mapping Programme data as well as geophysical survey and trenching have

been used to identify assets within the Order limits and a wider study area which could be affected by the proposed development.

3.7.6. A 1km study area has been identified for the assessment of the effects to below ground archaeological remains. A 2km study area from the Order limit boundary has been used for all designated heritage assets and selected non-designated heritage assets. A 5km study area from the Order limit boundary has been applied for the highest-grade designated heritage assets (Grade I and II* listed buildings, registered parks and gardens and scheduled monuments).

3.7.7. The assessment of effects is undertaken on the basis of a framework seeking to relate to the Environmental Impact Assessment (EIA) Regulations in terms of the significance of effects, as well as EN-1 and the National Planning Policy Framework (NPPF) in terms of whether there would be substantial harm or less than substantial harm to heritage significance (Table 3).

Table 3: Framework for the assessment of the significance of effects

Magnitude of Effects	Value (Heritage Significance) of Resource or Receptor				
	Very High	High	Medium	Low	Negligible
Very High	Major	Major	Moderate	Minor	Negligible
High	Major	Major	Moderate	Minor	Negligible
Medium	Moderate	Moderate	Moderate	Minor	Negligible
Low	Minor	Minor	Minor	Negligible	Negligible
Negligible	Negligible	Negligible	Negligible	Negligible	Negligible

Source: Chapter 11 [REP6-021]. Table 11.4

3.7.8. It is suggested that the following equivalents in terms of effects on heritage significance should apply:

- negligible = no harm to heritage significance
- minor adverse effect = less than substantial harm to heritage significance (lower end of the scale)
- moderate adverse effect = less than substantial harm to heritage significance (upper end of the scale)
- major adverse effect = substantial harm to heritage significance

Archaeological baseline

3.7.9. The desk-based assessment and geophysical surveying have indicated the presence of some visible earthworks and archaeological anomalies which indicate favourable conditions for the survival of buried remains within the development area. This has been corroborated by the results of the preliminary programme of trial trenching.

Designated heritage assets

3.7.10. The Settings Assessment version 3 [REP3-053] sets out the scoping exercise for designated heritage assets within the study areas (and selected non-designated heritage assets) which were considered for indirect effects to heritage significance through change within their setting. The following assets were identified as potentially sensitive to the effects of the development:

- Maplebeck Conservation Area
- Eakring Conservation Area
- Kersall Conservation Area
- Kelham Conservation Area
- Settlement West of Cromwell Village Scheduled Monument
- Willoughby Deserted Medieval Village Scheduled Monument
- Civil War Landscape and Scheduled Monuments
- Kersall Lodge Farm Grade II Listed Building
- Averham Park House Grade II* Listed Building
- South Farm Grade II Listed Building
- Grange Farmhouse Grade II Listed Building
- North Park Farmhouse Grade II Listed Building
- Moorhouse Chapel Grade II* Listed Building

Mitigation and assessment of likely significant effects

Archaeology

3.7.11. The results of the stage 1 archaeological investigations have allowed for embedded design mitigation measures to be included within the proposed development. This comprises the careful routing of the cable route and siting of the solar array areas, compounds, substations and battery energy storage system (BESS) to avoid or minimise impacts to key areas of archaeological sensitivity. Areas where archaeological remains have been avoided as part of the design would be preserved in situ [REP4-023].

3.7.12. The stage 2, post-consent archaeological investigation would include geophysical survey for all areas of the Order limits that could not be surveyed at stage 1. It would also include geoarchaeological evaluation of selected areas of high potential and in consideration of the anticipated development impacts, as informed by the stage 1 desk-based assessment. Finally, drawing on the results of the stage 1 and stage 2 work undertaken, archaeological evaluation would seek to ground-truth the geophysical survey results and other areas of high potential to confirm the presence or absence of archaeologically significant remains.

3.7.13. Once the stage 2 works have been completed, mitigation measures which remove any potential further impact, that is preservation in situ where practicable, would be preferred. Where this would not be possible, mitigating the loss of the archaeological resource through preservation by record would be proposed [REP4-023].

3.7.14. Moderate and minor adverse effects have been identified during the construction phase in relation to six archaeological assets [REP6-021] (Table

11.6). These effects are noted as being potentially significant in EIA terms. The application of mitigation measures would reduce these effects to negligible adverse which would not be significant in EIA terms.

Designated heritage assets

3.7.15. The outer north-eastern and western edges of the Maplebeck Conservation Area overlap slightly with the Order limits. Areas of mitigation/ enhancement would lie between the conservation area boundary and the photovoltaic (PV) array areas in these locations. A rise in the topography to the west of the Conservation Area would mean that the PV array would not be discernible from the Conservation Area. As such there would be no effect on the character or appearance of the Maplebeck Conservation Area or its special interests.

3.7.16. Overall, none of the assets considered for assessment are identified as being sensitive to direct or indirect construction phase intrusions. In terms of settings there could be some change in experience. However, the limited range and duration of construction effects would not result in a marked alteration to the settings of any designated heritage assets, nor have any effects on their heritage significance.

3.7.17. In terms of the operational phase, any indirect effects on the settings of heritage assets are assessed as having no more than negligible effects.

Cumulative effects

3.7.18. No additional effects through direct or indirect cumulative effects are identified.

ISSUES CONSIDERED DURING THE EXAMINATION

3.7.19. The main issues considered in the examination related to:

- the assessment methodology
- direct and indirect effects of the proposed development on heritage assets
- management of the archaeological resource
- the effects of the proposed development on Ossington Airfield

The assessment methodology

3.7.20. During the examination the ExA considered the framework for the assessment of the significance of effects on heritage assets (Table 3 above), specifically in ExA's first written questions (ExQ1) at Q8.1.18 [PD-008]. This sought views on the fact that for assets, or receptors, of "'very high' or 'high' value, which could include a world heritage site or a grade I listed building, a 'low' magnitude of effect, which could include a 'minor change in setting… (to) listed buildings, sites and other features which may lead to a small reduction in the contribution the setting makes to the significance of the heritage asset with an appreciable loss in the assets overall significance", would have a 'minor' effect overall. This would then equate to "less than

substantial harm to heritage significance (lower end of scale)", which would not be significant in EIA terms.

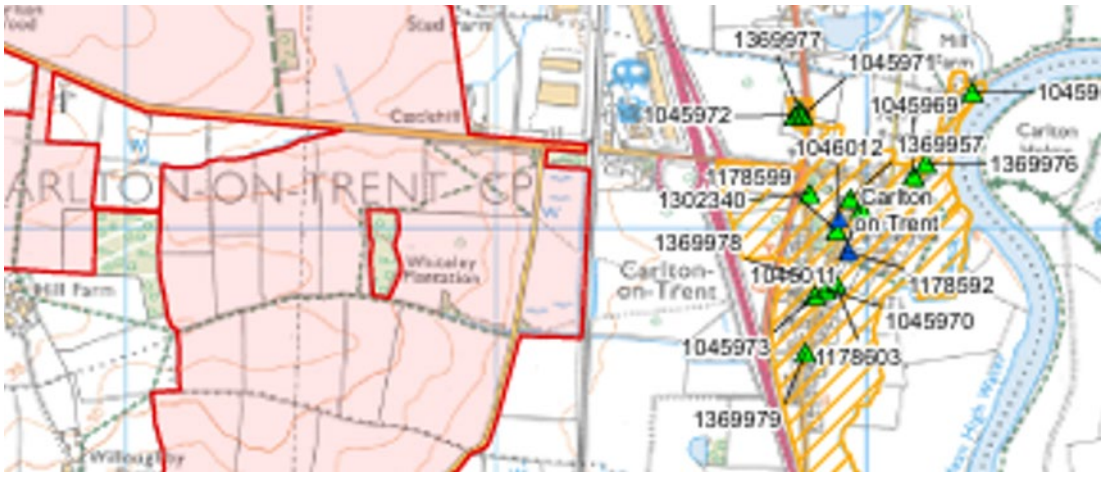
3.7.21. In response, Historic England suggested that this approach appeared "somewhat reductive" [REP2-126]. However, Nottinghamshire County Council (NCC) noted that this framework acts as a starting point for discussion about magnitude of effects and levels of harm. It places emphasis on professional judgement of 'major' and 'moderate' and also provides suitable explanation of how this judgement process deals with each heritage asset individually [REP2-123]. In response to the ExA's second written question (ExQ2) Q8.2.1 [PD-011], the applicant also clarified that it is a standard practice for determining what would constitute a 'significant effect' to be based upon the value/ heritage significance of the asset and the exercise of professional judgement [REP4-060]. By the end of the examination Historic England were satisfied with the assessment framework [REP6-046].

3.7.22. In its relevant representation (RR), NSDC raised concerns about the assessment made by grouping all heritage assets within conservation areas, regardless of the individual grade of the asset. Heritage assets that are grade I and II* are of 'high' heritage significance when compared to conservation areas and grade II listed buildings, which are of 'medium' heritage significance. NSDC set out that higher-grade assets should therefore be individually assessed [RR-156].

3.7.23. The applicant's response, referred to in the statement of common ground (SoCG) with NSDC, set out that in the initial scoping assessment the settings of grade I and II* listed buildings were reviewed and expanded in order to clarify how those settings differed, if at all, from those of the assets with which they were grouped. It was not considered proportionate or necessary to split them out from the asset groups in which they had been placed [REP2-088]. However, following discussions on this matter at Issue Specific Hearing (ISH) 3 [EV7-002, EV7-004, EV7-006, EV7-008], the applicant undertook further work to highlight where more highly graded assets contribute to the significance of the wider group without needing to undertake an individual assessment of each asset within that group [REP3-053]. NSDC confirmed that this was acceptable [REP6-042].

3.7.24. Nonetheless, Carlton-on-Trent Parish Council raised specific concerns about the grouping of assets in Carlton-on-Trent in terms of whether those of the highest status had been adequately considered. Reference was made to the applicant's assessment which states that the setting of St Marys Church in Carlton-on-Trent, a grade II* listed building, does not extend beyond that of the Conservation Area. The context of these heritage assets is shown in Figure 11. The IP noted that the church spire can be seen in the context of the areas proposed for solar panels to the west of the village [REP4-061], and argued that as the Church can be seen outside the village curtilage, it has a wide setting [AS-087S]. This matter was also raised in ISH3 [EV7-002, EV7-004, EV7-006, EV7-008].

Figure 11: Carlton-on-Trent designated heritage assets: Conservation Area hatched yellow, St Marys Church 1178592



Source: Figure A11.2.2G: Site, study area and designated heritage assets [REP3-053]

3.7.25. In its responses [REP3-101, REP5-044], the applicant referred to the heritage significance of St Marys Church as relating to its architectural and historic interests. The setting in which this can be most readily appreciated is within the churchyard, and within the village Conservation Area in which it lies. The relationship of the Church to the buildings and spaces within the churchyard and village, is part of what defines the character and appearance of the Conservation Area. There would be limited visibility of the proposed development from St Marys, meaning its Conservation Area setting would not be changed, and the contribution made by this setting would not be diminished.

ExA's consideration

3.7.26. As a starting point the ExA must consider the great weight attached to the conservation of designated heritage assets and therefore the importance of identifying and assessing the particular significance of any heritage asset that may be affected by the proposed development. This includes development affecting the setting of a heritage asset. The ExA considers that the applicant has identified and provided an adequate description of the significance of the heritage assets that would be affected by the proposed development and the contribution of their settings to that significance. In this regard the application meets the requirements of relevant legislation and policy.

3.7.27. The setting of St Marys Church in Carlton-on-Trent was considered by the ExA during site visits [EV1-002, EV1-003]. It was noted that the architectural and historic interest and significance of St Marys Church are best appreciated within the village context, with the A1 and railway line to the west limiting its wider setting. In terms of its presence in the wider area, the ExA noted that there is some visibility of the church spire over treetops when travelling along Ossington Road towards Carlton-on-Trent, through areas which would be dominated by solar arrays. However, the ExA agrees with the applicant's assessment that the proposed development would not diminish the presence of the church spire as a landmark in this wider area, and that its

inclusion within the group of heritage assets associated with the Conservation Area is reasonable.

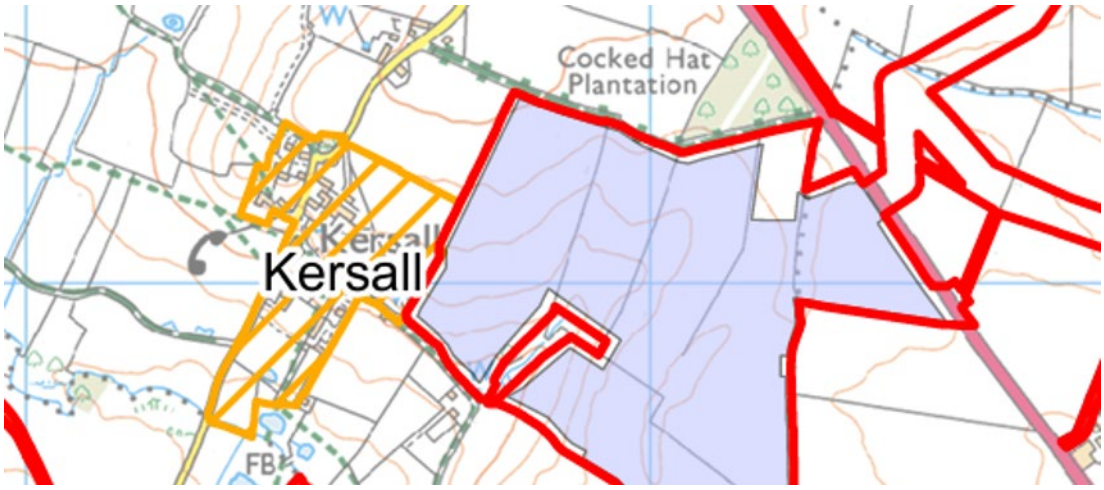
Direct and indirect effects of the proposed development on heritage assets

3.7.28. NSDC raised concerns in its LIR about the fact that a range of designated heritage assets considered to be potentially sensitive to the effects of the proposed development had been scoped out of the ES [REP1-075].

3.7.29. The discussion at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008] confirmed that NSDC were satisfied that justification for scoping out the assets identified could be addressed in the settings assessment [REP3-101]. This further justification was provided in the revision 3 update to the settings assessment [REP3-053]. The final signed SoCG with NSDC confirmed its satisfaction that it was unlikely that there would be impacts on the significance of the heritage assets previously of concern [REP6-042].

3.7.30. NSDC also questioned the adequacy of mitigation measures relating to a range of heritage assets [REP1-075]. Whilst many concerns were resolved through discussions, during ISH3 [EV7-002, EV7-004, EV7-006, EV7-008]. NSDC suggested that concerns remained regarding the proposed mitigation in relation to the presence of the BESS, noted as being between 4m and 14m in height, between Kelham Conservation Area and Averham Park House, a grade II* listed building. It also noted that the proposed development would adjoin the eastern boundary of the Kersall Conservation Area (Figure 12). It was agreed that these matters could be resolve through further discussion [REP3-101].

Figure 12: Kersall Conservation Area (Conservation Area hatched orange; Order limits red line; Solar PV areas blue)



Source: Figure 11.4a [APP-161]

3.7.31. By the end of the examination the final signed SoCG set out that these matters were resolved [REP6-042]. NSDC noted that the proposed BESS would be some distance away from the Kelham Conservation Area boundary and Averham Park House. Provided a tree belt is planted around the proposed BESS, as appears to be depicted in the landscape masterplan,

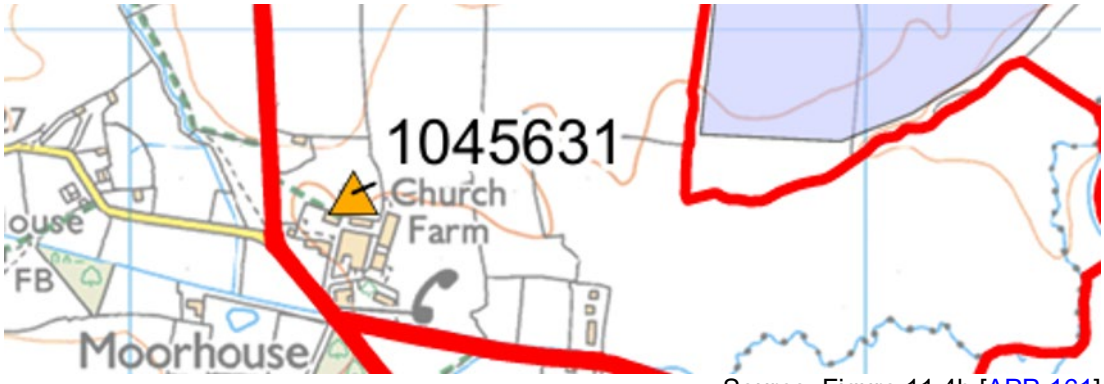
NSDC considered that this would acceptably mitigate the visual impact on these two designated heritage assets. In relation to Kersall Conservation Area, the applicant referred to the landscape masterplan which indicates hedgerow planting along this boundary. The outline Landscape and Ecological Management Plan, which would be secured by requirement 8 of the draft Development Consent Order (dDCO), states that this would be maintained at a width of 2m and a minimum height of 3m.

3.7.32. Interested parties (IP) raised specific concerns about the effects of the proposed development on the setting of the Moorhouse Chapel, a grade II* listed building, suggesting that the presence of solar arrays in adjacent fields would compromise approaches and vistas from the Chapel (Figure 13) [RR-012, RR-043, RR-199, REP1-095].

3.7.33. In response the applicant referred to the assessment set out in the ES Chapter 11, [REP6-021] which notes that the nearest solar array would be approximately 500m to the east. Existing intervening hedgerows would partially screen the array location, and additional native species would be planted to infill gaps and along sections of lower density in order to increase screening. Further hedgerow planting is proposed at the edge of the array.

3.7.34. The applicant recognised that the solar arrays would introduce a new, industrial element into the otherwise rural character of the landscape near to the Chapel, changing the appreciation of that character. However, the key relationship between the Chapel, farmstead and hamlet would remain unaffected. Overall, the introduction of the proposed array within the surroundings of the asset would result in a slight degree of change to an element of the asset's setting which makes a negligible contribution to its significance [REP1-065].

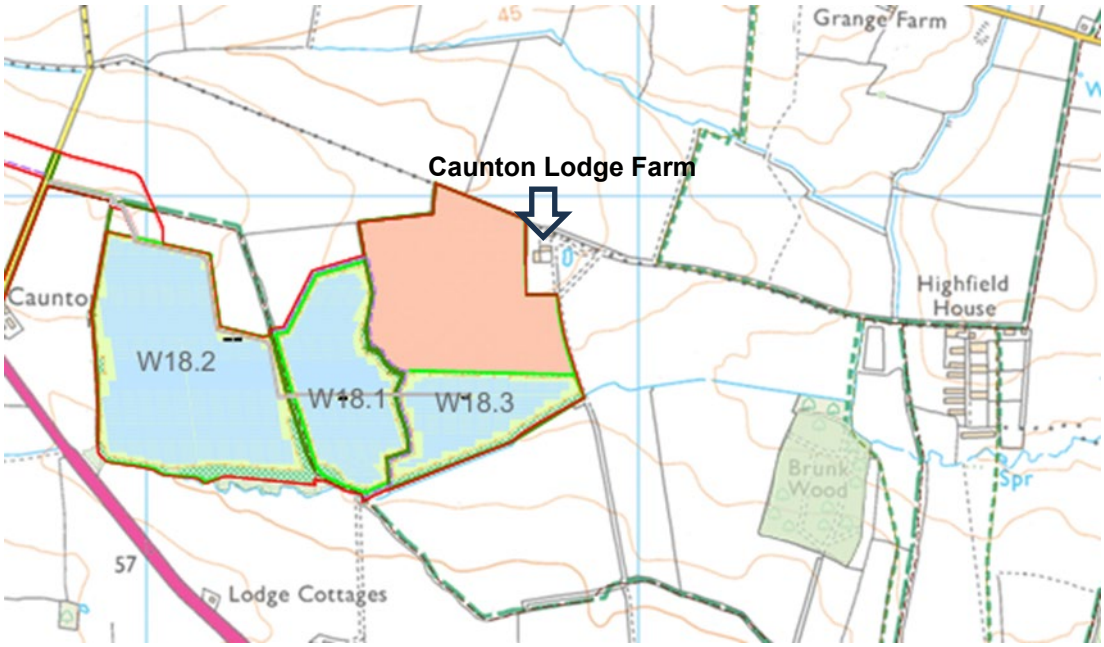
Figure 13: GII* listed Moorhouse Chapel



Source: Figure 11.4b [APP-161]

3.7.35. The residents of Caunton Lodge Farm (CLF) also raised specific concerns about the effects of the proposed development on their property as a non-designated heritage asset (NDHA). The location of CLF is illustrated in Figure 14.

Figure 14: Extract of Figure 5.2 landscape masterplan as it relates to Caunton Lodge Farm



Source: [APP-030]

3.7.36. An independent heritage report was submitted by the residents of CLF during the examination [AS-078, REP3-111]. This referred to CLF as an isolated farm dating from the late 1700's. This red brick and predominantly pantile roof building survives as a combination of historic and modern brick-built structures of a vernacular type. Reference was made to the remote rural setting of the property which, at a high point in the rolling topography, allows long and wide range views of it, particularly from the south and east. It concluded that the applicant's proposals, particularly development within the field to the south of the property, would cause substantial harm to its setting.

3.7.37. In response, the applicant acknowledged the status of CLF as a NDHA but noted that it was not selected as an NDHA to be included in the settings assessment based on agreement with the statutory bodies at the scoping stage. The applicant also criticised this heritage report, noting that it does not adequately meet the assessment process set out in relevant guidance and incorrectly frames the test of harm to a NDHA ([REP4-059] Appendix 2).

3.7.38. In terms of the special interest and significance of CLF, the applicant set out that this is derived from its limited historic and architectural interests. The architectural interest of the asset as an example of a vernacular agricultural building has been diminished by heavy modification. It has historic interest as an example of a post-medieval agricultural complex, though the enclosure within which it is set has been fundamentally changed by the introduction of elements including hedging and fences and the re-orientation of the access route. In this context the wider rural landscape setting is thought to make a slight contribution to its significance ([REP4-059] Appendix 2).

3.7.39. The applicant concluded that the proposed development would not harm the interest from which the significance of this NDHA is derived as the setting

beyond its immediate curtilage does not contribute significantly to how those interests can be understood and appreciated [REP4-059, Appendix 2].

3.7.40. In response to ExQ2 8.2.3 [PD-011], NSDC also agreed that whilst CLF is a NDHA, the domestic curtilage and associated paraphernalia reduce the building's original function and its association with the historic landscape [REP4-062]. The immediate setting of the property would not be affected by the proposed development and so there would be no direct harm in the vicinity of the NDHA. It noted that the proposal would have a wider visual effect on how the property would be experienced compared to its currently open agricultural setting. However, any marginal negative impact on this wider setting would be unlikely to affect the ability to appreciate its significance, such that any harm would be negligible.

3.7.41. Further input from the residents of CLF suggested that as CLF was not included in the ES, the original heritage baseline was incomplete and so the proposed development was brought forward without a full understanding of the heritage sensitivity of the site. They also reiterated the view that the significance of CLF is in part derived from its isolated rural setting, including the agricultural land to the south, which is considered to make a material and intrinsic contribution to its heritage interest. As the proposed development would be located within this wider setting and would be industrial in nature and visually prominent, it could lead to a high level of harm to the significance of CLF through the effect on its setting. It was also suggested that the mitigation hierarchy, requiring that adverse impacts be avoided through good design where reasonably possible, has not been complied with. [REP5-047, REP5-050].

3.7.42. The applicant's position remained as previously stated [REP6-064].

3.7.43. The residents of CLF also made reference to archaeological remains being identified within block W18.3 to the south of CLF, though rather than remove any direct impacts it was noted that this area is proposed to be managed through investigation and recording. The IPs suggested that as avoidance has been treated as a viable and appropriate response to heritage constraints in other locations where multiple heritage sensitivities coincide, to proceed with development in this location would mean that the mitigation hierarchy has not been applied in a consistent or sequential manner [REP5-047, REP5-050].

3.7.44. In response the applicant set out that the archaeological remains referred to have been identified from aerial photographs as cropmarks and are undated. They do not have the same level of density and apparent complexity as those areas identified in geophysical surveys and hence have not been excluded as part of the embedded mitigation and design approach [REP6-064].

3.7.45. NSDC raised concerns in its LIR about the effects of the proposed development on historic landscapes and historic parks and gardens, a number of which are NDHA [REP1-075]. This matter was resolved during the examination, with the applicant providing further details in the settings assessment [REP3-053].

3.7.46. However, other IPs expressed concerns at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], noting that the area is characterised by large estates and that the proposed development would further erode functional, traditional and historical connections. In response, the applicant set out that historic layers have been taken into account when assessing the setting of individual heritage assets, including conservation areas, listed buildings and related assets. It was not considered necessary to undertake a separate, detailed assessment of the wider landscape in its own right. Rather, the focus has been on how the landscape contributes to the setting of specific assets and to the appreciation of their significance [REP3-101].

3.7.47. Finally, some IPs raised concerns about the effects of the proposed development on the settings of other heritage assets (for example [RR-018, RR-113, RR-136, RR-203 REP1-073, REP1-095]). In response, the applicant referred to the ES, setting out that, following mitigation, none of the identified heritage assets would be expected to experience effects to their heritage significance through changes within their setting that are considered significant in EIA terms [REP1-065, REP2-116].

ExA's consideration

3.7.48. Having considered the representations made and the evidence set out in the ES, the ExA considers that the applicant has adequately assessed the likely significant heritage impacts and has demonstrated how the mitigation hierarchy has been applied. Having considered specific issues raised by IPs in relation to the area between Kelham Conservation Area and Averham House, Kersall Conservation Area and Moorhouse Chapel, the ExA is satisfied that the assessments undertaken and mitigation measures identified are adequate, such that any effects on heritage significance would be negligible.

3.7.49. The ExA visited CLF as part of an access required site visit [EV1-002]. CLF is a building of some interest and significance as a rural farm building. Nonetheless it has been considerably altered and extended, with its immediate setting characterised as a domestic garden. This is contained by a wider paddock area, which does enable an appreciation of its vernacular elements. Beyond this the wider rural hinterland contributes to the setting of the NDHA, and therefore its significance, to a much lesser degree. In this context the ExA's view is that the effect of the proposed development through placing solar arrays within this wider setting would be limited and unlikely to affect the ability to appreciate its significance, such that any harm would be negligible. The evidence presented also indicates that the applicant has complied with the mitigation hierarchy in relation to the consideration of archaeological interests.

Management of the archaeological resource

3.7.50. NCC set out in its LIR that, as the desk-based archaeological assessment covers the full site and the geophysical survey has been undertaken on the majority of the Order limits, this is largely sufficient to provide an acceptable level of data to inform the baseline for the ES and initial phases of trial trench

evaluation. The fact that the geophysics results have not been tested in their entirety was considered by NCC to be a serious limitation, though it was noted that the outline archaeological mitigation strategy (oAMS) makes provision for post consent geophysics and trial trench evaluation work that could potentially resolve this issue if implemented appropriately [REP1-078].

3.7.51. NCC also set out its appreciation that solar farm development differs from other development types and that some elements will not be fixed until post consent. Whilst NCC maintained the position that the assessment work should be completed as part of the application/ examination process to inform design, it accepted that some evaluation work could be left until the detailed design has been fixed and when areas of higher impact can be properly targeted for intrusive evaluation. Nonetheless, without an agreed scheme for the post consent geophysics and trial trench evaluation work, the harm to buried heritage could be significant [REP1-078].

3.7.52. Historic England questioned whether the current level of survey work is sufficient to assess the archaeological potential at this time [RR-073]. Historic England noted in response to ExQ1 Q8.1.2 [PD-008] that as the geophysical results have not been tested in their entirety there is a limited understanding of the nature of the archaeological record [REP2-126].

3.7.53. During ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], the applicant explained the approach to layering archaeological investigations, with desk-based assessments followed by geophysical work, covering approximately 70% of the Order limits. The geophysical survey results informed scheme design by removing areas of strong response at an early stage. Trial trenching was then used to ground-truth a range of geophysical responses and confirm the presence or absence of buried remains. Although not every area could be fully examined at this stage, the scope of work completed was considered to be proportionate and to give sufficient confidence in the likely significance of buried remains and the appropriate measures within the oAMS [REP3-101].

3.7.54. At this point in the examination, whilst the applicant had committed to post-consent evaluation and the targeting of areas identified through geophysical survey results, NCC considered that the proposed development may not provide for sufficiently extensive evaluation beyond those areas [REP3-108].

3.7.55. NCC continued to work with the applicant to refine the oAMS and to agree an outline programme for the post-consent completion of the assessment work. In this regard revision 3 of the oAMS was updated to clarify its aims and objectives, including the role of the archaeological contractor. Further stage 2 post-consent investigations were included, with specific reference to include a topographical survey of Ossington Airfield. In terms of the stage 3 mitigation measures this was amended to include “watching briefs”, to represent a continuous procedure aimed at the proactive identification, examination, and documentation of archaeological remnants during the construction phase of the proposed development [REP3-056].

3.7.56. Further changes to the oAMS, revision 4, were made to clarify the role of the project archaeologist in overseeing development, including permitted preliminary works and the delivery of mitigation measures [REP4-023].

3.7.57. At ExQ2 8.2.6 [PD-011] the ExA sought further clarification of the management of the archaeological resource post-consent. This question noted that EN-1, paragraph 5.9.16, sets out that a documentary record of our past is not as valuable as retaining the heritage asset, and therefore the ability to record evidence of the asset should not be a factor in deciding whether such loss should be permitted. In response, the applicant set out that mitigation measures in the oAMS would take into account the nature of any archaeological remains encountered, and feed that back into the emerging detailed design. Measures used would include design to ensure preservation in situ where practicable and where remains are of very high significance. Such decisions would be made in dialogue with NCC [REP4-060].

3.7.58. In response to the same question, NCC confirmed that the oAMS makes adequate provision for the pre and post consent investigative work to inform the mitigation strategy. This would include weighing the significance of the heritage asset against the public benefit of delivering the proposed development when determining the most appropriate mitigation measures [REP4-063].

3.7.59. Alongside these discussions, consideration was given to the drafting of the draft development consent order (dDCO) requirement 11, relating to the management of the archaeological resource. Following discussions with NCC, referred to during ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], various modifications were made. This included gaining clarity on the iterative process of undertaking evaluation, updating and then implementing the mitigation strategy. NCC emphasised the necessity of gaining such clarity given the complexity and scale of post-consent archaeological work [REP3-101].

3.7.60. By the end of the examination, Historic England had outstanding concerns about the use of the word ‘substantially’ in relation to the written scheme of investigation (WSI) for each phase being “substantially in accordance with” the oAMS. However, whilst it noted that this term does leave some level of ambiguity, it was accepted that a precedent for its use had been set in other made DCO [REP6-046].

3.7.61. Other matters relating to the management of the archaeological resource were agreed in the final signed SoCG’s between the applicant NCC [REP6-040] and Historic England [REP6-046] by the end of the examination.

ExA’s consideration

3.7.62. As set out above, concerns relating to the extent of archaeological investigation and its management post-consent had been resolved to the satisfaction of all parties by the end of the examination.

3.7.63. This would be secured by requirement 11 of the recommended (r) DCO (Appendix A), which would ensure that each phase of the proposed development would be carried out in accordance with an agreed WSI, which must identify areas where a programme of archaeological investigation is required. These details must be substantially in accordance with the oAMS, a certified document listed in schedule 11 of the rDCO. Any amendment to the oAMS must be undertaken in accordance with requirement 5 [REP4-023].

3.7.64. Overall, the ExA considers that the applicant has undertaken an adequate assessment of the archaeological interest of the site, on the basis that further post-consent assessment work would feed into and inform appropriate management and mitigation measures. This would include a watching brief to ensure that appropriate procedures for managing as yet unidentified heritage assets are in place.

The effects of the proposed development on Ossington Airfield

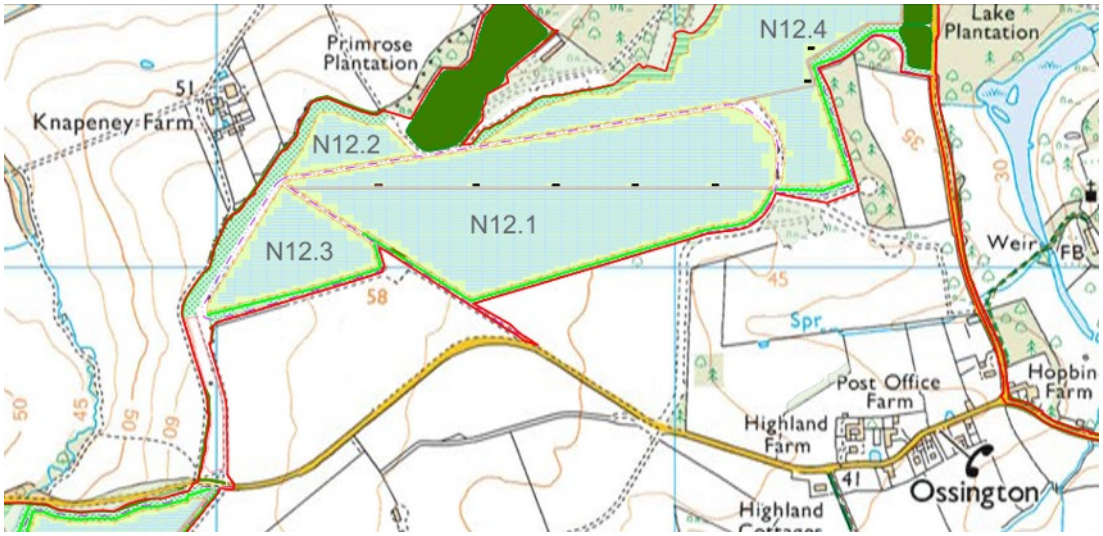
3.7.65. The former World War 2 (WW2) Airfield at RAF Ossington (the Airfield) lies to the west of Ossington village. It was built in 1941 and was operational until 1946, after which it was returned to agricultural use, though much of the infrastructure associated with it was still present in 1960 (Figure 15). The proposed development would occupy part of the former runway (Figure 16).

Figure 15: Ordnance Survey Historic Map, revised 1958, published 1960



Source: SoCG with NCC, Ossington Airfield Joint Statement Appendix 3 [AS-082]

Figure 16: Proposed development as it relates to the Airfield



Source: Figure 5.2 Landscape Masterplan [REP5-015]

3.7.66. In its LIR, NCC set out the concern that insufficient consideration had been given to this area. It noted that the Historic Environment Record was being enhanced to provide clarity as to the extent and nature of this heritage asset [REP1-078]. Ossington Solar Concerns Group referred to the fact that whilst this is not one of the most prominent or well-known airfields of WW2, it is of interest locally and further afield. It noted that the Airfields of Great Britain Conservation Trust thought the Airfield to be of sufficient interest to erect a memorial, the unveiling of which was well attended [REP1-135].

3.7.67. The applicant's response set out that the significance of the Airfield rests principally in its archaeological and historic interest, to which its setting does not contribute [REP2-116].

3.7.68. In response to ExQ1 Q8.1.20 [PD-008], which sought views on the applicant's settings assessment, NCC set out its view that the Airfield and associated built remains would be impacted both directly and as a consequence of significant changes to their setting. This would have the potential to cause substantial harm to the significance of the Airfield [REP2-123].

3.7.69. During ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], the ExA sought to clarify the positions of the parties around the heritage interest and significance of the Airfield, and the implications of the proposed development. NCC referred to recent investigations to identify the extent of surviving features, noting that substantial above ground-built remains had been identified and that there was the potential for below-ground archaeological remains. More generally, significant communal value is associated with the site, with regular gatherings on and around the former Airfield linked to its WW2 history. It attracts regular visitors, including international visitors, from those with connections to those who served at the Airfield [REP3-101].

3.7.70. NCC set out that whilst most surviving buildings would not be directly affected by the proposed development, the runways and open airfield areas

would be subject to direct impacts as part of the solar array areas. Setting considerations were also considered relevant given the scale of the surrounding landscape. The effects on archaeological remains could potentially be managed by the oAMS.

3.7.71. The applicant acknowledged the significance and communal interest of the Airfield, though noted the removal of much of the hard infrastructure and the fact that it has now been returned to agricultural use. Many surviving features of the Airfield are located outside the Order limits. In terms of the archaeological resource, the geophysical survey results suggested the presence of strong positive anomalies, likely to represent made ground and debris associated with the removal of former RAF infrastructure. Therefore, there is a relatively low likelihood of significant archaeological remains surviving within the areas proposed for solar installation, though further work would be incorporated into the stage 2 investigations.

3.7.72. The parties agreed to collaborate in order to clarify the heritage interest and significance of the Airfield and the effects of the proposed development, including how these could be mitigated. This is set out in a joint statement (the joint statement) appended to the final SoCG between the applicant and NCC [REP6-040].

3.7.73. The joint statement sets out the agreement that the extent of surviving Airfield remains within the Order limits are limited and generally in a poor state of preservation. There are few surviving structures, though the battle headquarters building and the surviving Mechanical and Electrical (M&E) plinth are referred to. Both are in poor condition. Nonetheless the parties agreed that the Airfield should be considered to be a non-designated heritage asset with significance derived from its archaeological, historic and architectural interests. The setting of the asset, principally the wide-ranging views skyward from the main runway area, also contribute to its heritage significance.

3.7.74. The applicant considered the heritage significance to be low and of no more than county importance, however NCC considered the heritage significance to be higher, and to be of regional if not greater importance.

3.7.75. In terms of the direct effects of the proposed development during construction, the illustrative design shows the array areas (N12.1, N12.2, N12.3) between the remaining areas of the runway (Figure 16). Some remaining runway elements such as concrete pads/ holding tanks used for the arresting gears could be physically impacted. The battle headquarters would remain in their current position within a shelterbelt on the western edge of the Airfield, to be retained as a mitigation area. Similarly, the intention would be to preserve the M&E plinth building. There may be some limited impacts on archaeological remains, though the parties agreed that this could be effectively managed by the oAMS, noting the preference for preserving any remaining WW2 structures in situ. Overall, the parties agreed that direct effects would result in a minor adverse impact, as identified in the ES.

3.7.76. Turning to indirect impacts, the parties agreed that the settings of most individual components of the wider Airfield would not be significantly altered by the proposals, nor would the contribution made by them to the overall significance of the former Airfield be diminished. However, the parties did not agree on the extent of the indirect impacts on the setting of the Airfield.

3.7.77. The applicant acknowledged that the open character of the current area within the Order limits would be changed, but as the principal infrastructure (the surviving traces of the runway, perimeter tracks, the battle headquarters and the M&E plinth building) would be preserved, the open character could largely be restored on decommissioning. The open character of the runway area of the Airfield would still be appreciated to the south of Ossington Road.

3.7.78. The applicant did not consider specific mitigation would be required. However, it suggested that there could be an opportunity for enhancement by the provision of information boards to explain the significance of the former Airfield to visitors, including people using the proposed permissive path running along the southern boundary of the Airfield. In this regard the applicant set out that there would be limited or minor harm to significance.

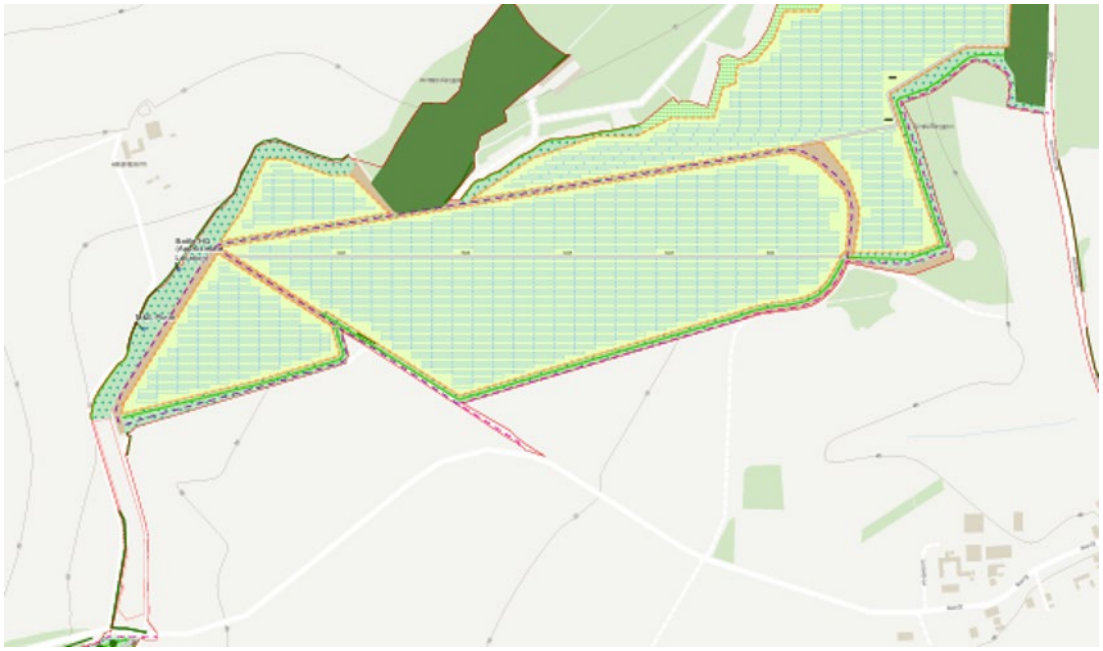
3.7.79. However, NCC referred to the wide-open setting of the Airfield, reflecting the fact that it was originally selected as a suitably flat area for this facility. It referred specifically to the open character of the runway area to the west of Ossington village as being an essential element of the setting of the Airfield (both within and outside the Order limits) within which the significance of the former Airfield can be appreciated. NCC also referred to this openness allowing visual inter-relationships between elements, noting that the relationship between the battle headquarters and the main airfield would be impacted by the presence of the panels, and could be harmed by the perimeter treatments.

3.7.80. Therefore, NCC considered the magnitude of impact to be higher than assessed by the applicant. It set out that as the significance of the asset would be harmed by the proposals, this requires mitigation. In this regard NCC supported opportunities for improving public awareness of the significance of the former Airfield. NCC would also prefer to limit the presence of panels around the main runway areas, keeping the northern runway area clear of solar panels, to retain the original alignment and sightlines to the battle headquarters from the east. As an alternative, NCC suggested design changes to reflect the original runway alignments, including those elements which have been removed and are no longer visible.

3.7.81. By the end of the examination the applicant set out that further discussions had been undertaken with NCC and the landowner. As a result, the applicant had revised and extended the permissive routes through the former RAF Ossington Airfield site, so as to provide a circuit utilising the existing perimeter tracks and allowing access from the memorial to the locations of the M&E plinth and the battle headquarters (Figure 17). However, the positions of the parties remained that whilst the applicant's view was that

there would be no significant effect on the Airfield as a NHDA, NCC considered the level of harm to be significant [REP6-040].

Figure 17: Ossington Airfield proposed permissive footpaths



Source: SoCG with NCC, Appendix 3 Joint Statement Former RAF Ossington [REP6-040]

ExA's consideration

3.7.82. The ExA was able to view the Airfield and its context as part of site inspections [EV1-002]. The ExA agrees with the assessment of the significance of this NDHA. Noting the cultural and social values associated with site, in terms of ongoing association with WW2 in local events and activities, the ExA agrees with NCC that its value is of at least regional importance.

3.7.83. The direct impacts of the proposed development on the Airfield, including archaeology would, following appropriate mitigation secured through the oAMS and rDCO requirement 11, result in a minor adverse impact.

3.7.84. Indirect impacts on the setting of the Airfield would be greater, noting that the introduction of solar arrays, fencing, hedges and woodland mitigation would result in a reduction in the extent of the expansive views that characterise the wider site. Nonetheless any harm to the visual appreciation of the interrelationships between the remaining elements of the Airfield infrastructure would be low level, noting that intervisibility is presently limited. The provision of interpretation facilities aligned to the permissive path through the site would provide a degree of mitigation. The extent of harm to the significance of the setting of this non-designated heritage asset would be no greater than moderate. This would not be significant in EIA terms.

CONCLUSIONS

3.7.85. Having considered the evidence set out in the ES, the ExA is satisfied that it complies with the requirements of EN-1 section 5.9, and EN-3, section 2.10,

by providing a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance, with a level of detail proportionate to the importance of the heritage asset. The applicant has undertaken adequate desk-based and field-based survey work to determine the potential to encounter known and unknown archaeological assets. It has applied the mitigation hierarchy and proposed suitable mitigations.

3.7.86. The proposed development would not lead to the substantial harm or total loss of significance of any designated heritage asset, as defined in EN-1. Further, the ExA agrees with the conclusions that any indirect effects on the settings of heritage assets would have no more than negligible effects. The ExA agrees with the applicant's conclusions that any residual harm to identified archaeological assets would be negligible. This would be managed through requirement 11 of the rDCO (Appendix A), which would ensure that each phase of the proposed development would be carried out in accordance with an agreed WSI, the details of which must be substantially in accordance with the oAMS, a certified document listed in schedule 11.

3.7.87. The ExA identified up to a moderate level of harm to the setting of Ossington Airfield NDHA.

3.7.88. Paragraph 5.9.28 of EN-1 states that considerable importance and weight should be given to the desirability of preserving all heritage assets. Paragraph 5.9.36 sets out that when considering the settings of designated heritage assets, appropriate weight should be given to the desirability of preserving the settings of such assets. Paragraph 5.9.33 also sets out that any impacts on NDHAs should be subject to a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset. These considerations are made in the planning balance section of this report, chapter 5.

3.8. CUMULATIVE AND INTER-RELATED EFFECTS

INTRODUCTION

3.8.1. This section considers both cumulative and inter-related effects arising from the proposed development. Cumulative effects were considered by the applicant on a topic-by-topic basis and reported as such in the ES. Where cumulative effects were identified these have been considered in the individual topic sections of chapter 3 and are not repeated here. The ES also considers inter-related effects on a topic-by-topic basis, with the exception of the effects on local people, which are considered here. This section therefore addresses:

- the overall approach and methodology used in the assessment of the cumulative effects of the proposed development with other projects
- the approach to the assessment of inter-relationships between the different environmental effects of the proposed development, and the effects on local people

3.8.2. In considering cumulative and inter-related effects, the Examining Authority (ExA) has had regard to:

- the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)
- the requirements of the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 4.3 'Environmental Effects/ Considerations'
- the requirements of the NPS for Renewable Energy Infrastructure (EN-3), in particular section 2.10 'Solar Photovoltaic Generation'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Cumulative effects assessment

3.8.3. The applicant's approach to the cumulative effects assessment (CEA) is set out in Chapter 2 Environmental Impact Assessment [APP-045]. The approach to CEA takes into consideration the Planning Inspectorate's Advice on Cumulative Effects Assessment (PINs CEA advice), along with comments made in response to the consultation.

3.8.4. Following the PINs CEA advice, the approach follows a 4-stage process, summarised as follows:

- stage 1: identification of a 'longlist' of other proposed developments based on the area, or zone of influence, around the proposed development that may be affected for each environmental topic
- stage 2: preparation of a 'shortlist' of other proposed developments, defined by reviewing the longlist against inclusion/ exclusion criteria. The stage 1 and stage 2 assessments are set out in the ES Volume 4 –

Technical Appendix A2.1 – Cumulative Assessment Stages 1 and 2 [APP-191]. This was revised during the course of the examination, the final version being revision 5 [REP6-026]. This included consideration of the potential projects suggested as part of NG+ which have been developed in parallel to with proposed development. NG+ refers to environmental and socio-economic enhancement works that are being offered as part of the community benefit scheme associated with the proposed development. Only the proposed flood alleviation measures are sufficiently advanced in concept that they could be considered in the cumulative effects assessment

- stage 3: collection of environmental information (if available) relating to the other developments on the shortlist
- stage 4: consideration of whether significant cumulative effects are likely to occur between the proposed development and the other developments on the shortlist

3.8.5. The CEA is presented within each topic chapter as a separate section from the impact assessment of the proposed development alone. As part of the assessment, all projects and plans considered alongside the proposed development are allocated into 'tiers' reflecting their stage within the planning and development process. This ranged from tier 1 (most certain) to tier 3 (least certain), in accordance with the PINs CEA advice.

3.8.6. At stage 4 the assessment seeks to:

- be at a level of detail proportionate to the information available
- explain and record any limits or gaps in the information
- consider all tier 1 and tier 2 other existing and, or approved developments where possible
- consider all tier 3 other existing and, or approved development where possible, although this may be qualitative and high level
- move from a qualitative to a more quantitative assessment as the availability of information increases
- include the effects arising from multiple, individually non-significant effects
- be proportionate and no longer than necessary to identify and assess likely significant cumulative effects

3.8.7. The measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant cumulative effects and, where appropriate, any proposed monitoring arrangements, are described in the technical chapters of the ES, along with the means of securing the delivery of these.

Inter-related effects

3.8.8. The inter-related effects between the environmental topics presented in the Environmental Statement (ES) are evaluated in Chapter 19 Interrelationships [APP-062]. This sets out that inter-related effects may occur where two or more effects from the proposed development arise that have the potential to impact on the same receptor during construction, operation or decommissioning. It explains that an effect taken in isolation may not have a

significant effect on a receptor, but where several effects are considered in an inter-related manner, the resultant effect could be considered significant.

3.8.9. The technical chapters of the ES identify the potential receptors, the effects and their assessment and mitigation measures. Any remaining residual effects are considered in Chapter 19. Effects assessed as "negligible" or "very low" are considered not to have the potential to contribute to inter-relationship effects and have not been considered further.

3.8.10. The ES Chapter 19, section 19.3.4 sets out that the potential effects on all receptors except local people are considered in the specific topic chapters. The scope of the inter-relationships assessment is therefore limited to the consideration of the potential for multiple different effects to act on local people.

3.8.11. Following the assessment of all non-negligible impacts that could affect local people, the applicant concludes that potential in-combination effects on local people would be in almost all cases negligible, and as a worst-case minor for all stages of the proposed development. These effects would not be significant in terms of the EIA Regulations.

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.12. The main issues considered in the examination related to:

- whether the cumulative effects of the proposed development with existing and planned infrastructure have been fully considered
- whether inter-related effects have been adequately assessed, noting the scale and dispersed nature of the proposed development

Whether the cumulative effects of the proposed development with existing and planned infrastructure have been fully considered

3.8.13. As a starting point, Newark and Sherwood District Council (NSDC) agreed with the long list of potential cumulative projects presented by the applicant, and also the list of developments shortlisted for further assessment. That said, they did not agree with all of the conclusions relating to the potential for cumulative effects, as set out in the final Statement of Common Ground (SoCG) [REP6-042]. The specific matters raised by NSDC relating to particular effects are considered under the relevant topic area.

3.8.14. However, other IPs raised considerable concerns about the clustering of solar, battery energy storage systems (BESS) and other energy and infrastructure projects. Some noted the number of existing consented schemes and that this is along the course of the River Trent and associated with existing and former power stations [RR-101, RR-165, RR-163, RR-183, RR-211, REP1-087, REP1-123, REP1-127]. They set out that the impacts of the proposed development must not be considered in isolation and questioned whether the applicant's assessment had fully considered the cumulative impacts of existing and planned infrastructure [RR-078, RR-101, REP1-070, REP1-091, REP1-093, AS-080, REP4-074].

3.8.15. These concerns and the applicant's approach to the cumulative assessment were discussed at ISH1 [EV3-001, EV3-003]. Noting that the cut-off date for inclusion of schemes within the cumulative assessment was 4th April 2025, the applicant agreed that the assessment would be updated during the examination, in conjunction with the local authorities [REP1-068].

3.8.16. The cumulative assessment was updated at deadline (D)2 [REP2-042], D5 [REP5-019] and D6 [REP6-026]. The applicant also noted in response to ExQ2 Q9.2.1 [PD-011] that it was not aware of any changes to developments that could lead to a change in likely significant cumulative effects arising from the proposed development [REP4-060].

3.8.17. In terms of specific schemes referred to by IPs, this included the H2East Pipeline: Humber to Nottinghamshire, noting the potential impact on many parishes, including land involved in the proposed development [REP4-074, REP6-072]. The applicant confirmed that towards the end of the examination this scheme had been registered on the Planning Inspectorate website, and the scoping opinion published on 13 April 2026. On this basis, the Cumulative Assessment stages 1 and 2 document was updated at D6 to include this project, classified as tier 3 [REP6-026]. The applicant anticipated that due to the nature, timing and location of this project there would be no potential for cumulative effects with the proposed development during construction or operation.

3.8.18. Similarly, with reference to the Staythorpe Power Station Carbon Capture and Storage Project, the applicant noted that an application to vary the existing section 36(c) consent of the Electricity Act 1989 for Staythorpe Power Station was submitted in February 2026. The potential for cumulative effects from the overlapping operational phases of this project with the proposed development was assessed in revised ES chapters on landscape and visual, heritage, ecology and noise submitted at D6 [REP6-026].

3.8.19. The Joint Parishes Action Group made reference to the National Grid Electricity Transmission plc (NGET) West Burton to Ratcliffe-on-Soar Refurbishment Project (also known as the SCRE/ WRRE Project) [AS-079, REP4-074]. The applicant noted that the work involved would be limited to upgrading the electricity overhead lines and that the potential for significant cumulative environmental effects would therefore be negligible [REP4-059]. Nonetheless, in the final position statement submitted at D6 [REP6-074], NGET identified the potential for cumulative effects relating to the construction of the proposed development alongside proposed NGET projects, and for this reason suggested protective provisions to address their concerns. This point is considered further in chapter 6.

3.8.20. Norwell Parish Council also made reference to the need for the cumulative assessment to include a further solar scheme at Barnby-in-the-Willows [RR-163]. However, the applicant set out that this does not appear to be subject to a planning application [REP2-115].

3.8.21. More generally, the applicant addressed concerns about suggested inconsistencies in the cumulative assessment [REP4-074]. For example,

some of the major housing developments underway around Newark and Sherwood district were included on the basis that they could lead to a change in the amount of temporary accommodation available for those working on the proposed development. However other housing schemes already under construction would be unlikely to overlap with the construction phase of the proposed development and so were not included as they would not affect the cumulative baseline of available accommodation [REP5-044].

3.8.22. With reference to NG+ proposals, the ExA questioned at ExQ1 Q9.1.1 [PD-008] why only the potential for cumulative effects relating to flood alleviation works have been assessed, noting that the NG+ works may involve things such as excavations and above ground bunds. The applicant clarified that at the time of the examination there was limited technical information about the potential other components to NG+, meaning that they could be screened out of consideration for cumulative impacts [REP2-117].

ExA's consideration

3.8.23. The ExA acknowledges the concerns raised by IPs in relation to the extent of operational, consented and proposed developments in the vicinity of the current proposal. In this regard it is relevant to refer to EN-3 paragraphs 2.10.25 and 2.10.26 which set out the potential for concentrations of solar infrastructure, recognising that applicants may choose a site based on nearby available grid export capacity. The cumulative impacts of situating a solar farm in proximity to other energy generating stations and infrastructure should therefore be considered.

3.8.24. On this point the ExA is satisfied that the applicant's assessment of cumulative effects, as amended during the examination, follows the approach suggested in the PINs CEA advice and accords with the EIA Regulations. In this regard the applicant has complied with the requirement to consider potential adverse impacts, including on the environment, and including any long-term and cumulative adverse impacts, as set out in EN-1 paragraph 4.1.5.

Whether inter-related effects have been adequately assessed, noting the scale and dispersed nature of the proposed development

3.8.25. IPs raised concerns about the unusual, dispersed nature of the proposed development, noting that it would surround some settlements, suggesting that its impacts would be felt over a wide area [RR-047, RR-049, RR-061, RR-183, REP1-087]. These concerns could be characterised as relating to effects that individually may not be significant, but when considered cumulatively several effects taken together could be significant.

3.8.26. Such concerns focused on the fact that the project would encircle a large area, including many settlements. For this reason, it was suggested that the use of zones of influence as a basis for the assessment was not adequate and the whole of the encircled area should have been included in the assessment [REP4-074]. In response the applicant set out that the zone of Influence for any given environmental topic is established by the maximum distance at which non-negligible effects could occur. As such, there is no

justification or requirement to use a zone of influence that is larger than the potential range of influence [REP5-044].

ExA's consideration

3.8.27. The unusual configuration of the proposed development has generated concerns amongst IPs about the extent of the inter-related effects. Nonetheless, the ExA is satisfied that the applicant has considered how the accumulation of and inter-relationship between effects might impact the environment, economy or community as a whole, as referenced in EN-1 paragraph 4.3.19.

CONCLUSIONS

3.8.28. The EIA Regulations require that the ES describes the aspects of the environment likely to be significantly affected by the project, including direct effects and any indirect, secondary and cumulative effects. This is repeated in section 4.3 of EN-1.

3.8.29. The ExA's view overall is that the applicant's methodology for the assessment of cumulative effects is robust and in accordance with the PINs CEA advice. The ExA has reached this view having considered the concerns of IPs that insufficient attention has been paid to planned developments, noting that during the examination the applicant has continued to monitor the possibility that further developments would lead to cumulative effects. This includes other solar developments that are at various stages of planning and implementation.

3.8.30. The ExA agrees that inter-related effects have been adequately assessed. The ExA also agrees with the applicant that the potential inter-related effects on local people for all phases of the proposed development would be in almost all cases negligible, though as a worst-case minor. Given the ExA's findings in relation to these matters, the ExA does not consider that the accumulation of or inter-relationship of these effects would be significant.

3.8.31. Based on these conclusions, matters relating to the assessment of cumulative effects and the assessment of inter-related effects, including the effects on local people, should be afforded a little negative weight in the planning balance. The nature of cumulative effects in relation to particular topic areas are considered elsewhere in this chapter.

3.9. GROUND CONDITIONS AND LAND CONTAMINATION

INTRODUCTION

3.9.1. This section considers the effects of the proposed development on ground conditions and contaminated land.

3.9.2. When assessing the effects of the proposed development on ground conditions and land contamination the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.4 'Biodiversity and Geological Conservation' and section 5.11 'Land Use, Including Open Space, Green Infrastructure, and Green Belt'
- the NPS for Electricity Networks Infrastructure (EN-5), in particular section 2.9 'Applicant Assessment'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.9.3. The applicant sets out its assessment of the effects of the proposed development on ground conditions in Environmental Statement (ES) Chapter 10 Ground Conditions and Land Contamination [APP-053], with updated versions provided, including the final version, revision 3 [REP3-024].

3.9.4. The ES is also supported by a series of Preliminary Risk Assessments (PRAs) and technical appendices which are based on eight distinct study areas within the Order limits of the proposed development [APP-230, APP-231, APP-232, APP-233, APP-234, APP-235, APP-236 and APP-237].

3.9.5. A Minerals Resource Assessment (MRA) in Technical Appendix A10.9 [APP-238] and a detailed UXO Desk Study in Technical Appendix A10.10 [APP-239] was also included to support the application.

Baseline

3.9.6. The applicant states that information on ground conditions and land contamination was collected through a detailed desk-based review of existing studies and datasets, reviewing published data from sources such as the British Geological Survey, Nottinghamshire County Council's (NCC) Minerals Local Plan and Defra's Magic Maps.

3.9.7. The review of published data sources assessed the current baseline conditions for the following matters:

- Identification of designated sites
- site history

- geology
- superficial deposits
- bedrock geology
- hydrogeology
- quarry and mining
- environmental data
- unexploded ordnance

3.9.8. The applicant considers how future baseline conditions could be affected by climate change and change of land use, including both aspects in the assessment.

3.9.9. Historical research indicates a predominantly agricultural past land use for the Order limits, the main potential contamination sources being the former RAF Ossington Airfield (the Airfield) in study area 7 and former oil drilling activities also in study area 7.

3.9.10. The applicant does not identify any geological conservation sites within the study areas associated with the geological sequences present. However, the river terrace sands and gravels in the east of the Order Limits and the Mercia Mudstone Group have been identified as being part of designated Mineral Safeguarding Areas for sand and gravel and brick clay respectively.

3.9.11. The applicant outlines the key receptors assessed as being:

- human health (offsite land users)
- controlled waters (secondary A aquifers)
- controlled waters (surface water bodies)

Methodology

3.9.12. The applicant states that the PRAs referred to in 3.9.4 provide the main sources of data that informs the assessment.

3.9.13. The MRA concludes that the safeguarded mineral resources would not be permanently sterilised by the proposed development given its temporary nature. The safeguarded resource would subsequently be available for extraction at some point in the future.

Mitigation

3.9.14. The applicant proposes an outline Construction Environmental Management Plan (oCEMP) [REP4-017], which would set out best practice measures to ensure any environmental impacts during construction and in terms of land contamination are minimal. The oCEMP would also include a discovery protocol strategy, to ensure that any contamination identified during construction is assessed by a specialist in land contamination. The oCEMP would be secured via requirement 12 in the draft Development Consent Order (dDCO) [REP6-004].

3.9.15. The applicant further proposes to undertake ground investigations after the detailed design stage. If, following these investigations or as a result of the

discovery strategy, it is determined that remediation is required to make the land suitable for its proposed use, a remediation strategy would be prepared. This would be submitted to North Sherwood District Council (NSDC) for approval prior to its implementation. This is included at requirement 16 of the dDCO [REP6-004].

3.9.16. The applicant also proposes an outline Decommissioning and Restoration Plan (oDRP) which includes measures to mitigate against potential pollution incidents during the decommissioning of the proposed development [REP4-021].

Assessment of likely significant effects

Construction

Effects on off-site human receptors by existing contamination

3.9.17. The applicant states that off-site receptors comprise nearby residents and workers. The area within the Order limits is predominantly of low residential density and has limited potential contamination sources. Therefore, the proposed development is not considered to present a significant risk to human receptors.

3.9.18. The applicant concludes that the magnitude of effect, after the mitigation measures are applied would be negligible, therefore not significant.

Effects on groundwater quality in underlying aquifer units and connected surface water quality from existing areas of contamination causing a deterioration

3.9.19. The applicant states that recent or historical land uses have the potential to result in localised areas of soil or groundwater contamination. That contamination is subject to potential mobilisation if disturbed. The mobilisation of contamination may result in an adverse impact on underlying aquifers. Such effects can be direct or may arise from the creation of new pathways, for example through piling or trench excavation. There is the potential for the presence of localised made ground that contains elevated concentrations of contaminants, particularly around any areas of reprofiled/ infilled historical mineral workings and the Airfield. The shallow, Secondary A aquifer associated with the fluvial superficial deposits is a locally important groundwater resource that is currently of good quantitative status and used for abstractions.

3.9.20. The presence or severity of any contamination is not known although the risk is qualitatively assessed as being low, based on the findings of the desk top studies undertaken, as presented within technical appendices As A10.1 to A10.8 [APP-230, APP-231, APP-232, APP-233, APP-234, APP-235, APP-236 and APP-237]. Measures within the oCEMP would also mitigate possible impact of contamination.

3.9.21. The applicant predicts that the magnitude of the effect on the Secondary A aquifers would be negligible and the sensitivity of the receptor is medium. The effect would, therefore, be not significant.

Operation

3.9.22. The applicant states that once constructed, no activities would be likely during operation that would have the potential to result in the additional mobilisation of any existing contamination. The magnitude of impact during the operation and maintenance phase would be negligible for all areas, therefore not significant in EIA terms.

Decommissioning

3.9.23. The applicant predicts that the magnitude of impact during the decommissioning phase would be less than that reported for the construction phase, so the magnitude of impact is anticipated to be negligible and therefore not significant.

Cumulative effects

3.9.24. The applicant explains that its assessment of cumulative effects on ground conditions is not considered to be significant. Only negligible to minor adverse effects have been identified in relation to ground conditions and contamination associated with the proposed development and in combination with other projects.

ISSUES CONSIDERED DURING THE EXAMINATION

3.9.25. Concern was raised by some IP's regarding land stability resulting from the proposed development [RR-005].

3.9.26. In response, the applicant stated that the assessments undertaken identified that, without the need for any further mitigation measures, the proposed development would not increase the risk of land instability within the Order limits [REP2-115]. The applicant also stated that the assessment of risk of land instability caused by natural processes was negligible due to the geological strata present.

3.9.27. In its LIR [REP1-075] NSDC stated that the applicant's PRA's were well-structured and identified plausible contaminant linkages. The regional minerals officer also concurred with the conclusion of the MRA [REP6-064].

3.9.28. NSDC also referred to the proposed remediation strategy contained within the discovery protocol, as secured by requirement 16 of the dDCO. NSDC stated they wished to make further comments on the wording of this requirement in due course, to ensure that the usual verification process is captured so any necessary remediation has been successfully implemented [REP1-075].

3.9.29. The applicant stated that they have included flexibility in their proposed Works Plans [AS-005] to relocate elements of the development, if required, to avoid increased risk of land instability that may be identified during geotechnical ground investigation works.

3.9.30. In the final signed Statement of Common Ground (SoCG) with NSDC, the applicant confirmed that no part of the proposed development may

commence until a written strategy in relation to the identification and remediation of any risks associated with contamination, identified as more than a low level of risk, has been submitted to and approved by the planning authority, that is NSDC [REP6-042].

3.9.31. In the final signed statement of common ground with NSDC all matters related to ground conditions and contaminated land were agreed [REP6-042].

3.9.32. The Environment Agency (EA) raised a number of points in its RR [RR-054]. The EA stated that it had not been named as a consultee in requirements that dealt with:

- construction environmental management
- operational environmental management
- decommissioning and restoration

3.9.33. The applicant updated each requirement of the dDCO at Deadline 2, to include the EA as a required consultee [REP2-005].

3.9.34. The EA questioned why the ES Chapter 10 Ground Conditions stated that potential construction pollution risks to controlled waters were covered in Chapter 9 Water Resources, but Chapter 9 did not reference the aquifer status of the geology beneath the proposed development, groundwater had not been included in the predicted effects of the proposed development, only watercourses, drainage ditches and near-surface water [RR-054].

3.9.35. The applicant stated that Table 9.9 of ES Chapter 9 Water Resources assigned groundwater as high sensitivity and therefore the aquifers had been assessed appropriately. The applicant also stated that the Works No. 5a, the proposed location of BESS, would be located on a Secondary B aquifer (clay, silt, sand and gravel) [REP1-052].

3.9.36. In addition, the applicant also confirmed that ES Chapter 9 Water Resources had been updated to include explicit reference to aquifer status as requested by the EA [REP3-022].

3.9.37. In the final signed SoCG with the EA all ground conditions and contaminated land matters were shown as agreed [REP5-032].

ExA's consideration

3.9.38. The ExA finds the applicant's responses to representations satisfactory as concerns raised regarding ground instability were not supported by evidence that caused the ExA to doubt the applicant's approach to the assessment, or its conclusions.

3.9.39. The ExA has no reason to disagree with the applicant's assessment of effects and notes that there are no outstanding matters of disagreement with statutory consultees, as confirmed in the final signed SoCGs with the EA and NSDC.

3.9.40. The ExA considers that the applicant has demonstrated compliance with EN-1 paragraph 5.11.5 and 5.11.17 by undertaking of the PRA's, the findings of which demonstrate that the site is suitable for its intended use and that risks have been adequately assessed and mitigated.

3.9.41. The ExA finds there is consistency with EN-1 paragraph 5.4.17 and EN-3 section 2.10 as the applicant has demonstrated that there are no geological conservation sites within the Order limits following a review of designated and non-designated geological conservation sites.

CONCLUSIONS

3.9.42. In conclusion, accounting for the measures set out in its recommended DCO (rDCO), the ExA assigns neutral weight to the issue with regard to the making of the Order.

3.10. LANDSCAPE AND VISUAL

INTRODUCTION

3.10.1. This section considers the landscape and visual effects of the proposed development. Matters relating to glint and glare are considered in section 3.16 of this recommendation report.

3.10.2. In considering landscape and visual effects, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.10 'Landscape and Visual'
- the NPS for Renewable Energy (EN-3), in particular section 2.10 'Solar Photovoltaic Generation'
- the NPS for Electricity Networks Infrastructure (EN-5), in particular the relevant paragraphs of section 2.2 'Factors influencing site selection and design', section 2.9 'Applicant Assessment', and section 2.11 'Secretary of State decision-making'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.10.3. The initial version of Environmental Statement (ES) Chapter 7 Landscape and Visual [APP-050] was updated during the examination, the final version being revision 3 [REP6-017]. Chapter 7 is also referred to as the landscape and visual impact assessment (LVIA). It sets out the assessment methodology, study areas, baseline conditions and the likely effects on the landscape as a result of the construction and operation of the proposed development.

3.10.4. The ES is supported by technical appendices including:

- landscape and visual consultation [APP-208]
- landscape and visual methodology [APP-209]
- assessment of landscape sensitivity [APP-210]
- illustrative views [APP-211]
- non-significant effects [APP-212]
- residential visual amenity assessment [APP-213]
- further landscape and visual figures [AS-035, AS-036, AS-037, AS-038, AS-039, AS-040]

Baseline

Study Area

3.10.5. The ES adopts a 2km study area for this assessment, refined from 5km at the preliminary environmental information report (PEIR) stage. The PEIR assessment indicated that there would be no significant effects beyond

approximately 0.7km and for all receptors the assessed effects would reduce to negligible beyond 1.5km.

Landscape

3.10.6. The site is to the west of the River Trent, in a gently undulating landscape of mixed, but predominantly arable farming and occasional woodlands. Villages and hamlets are connected by rural roads and public rights of way (PRoW). Smaller fields and tree cover are more common close to villages and along water courses, with larger and more open fields away from these. Roadside hedges and trees are common and tend to constrain views for drivers along many of the routes, but there are also more open vistas where roadside vegetation is absent, sparse or cut low [REP6-017].

3.10.7. The Order limits are located within National Character Area (NCA) 48, Trent and Belvoir Vales. They are mostly within the Mid-Nottinghamshire Farmlands Regional Character Area (RCA) though include some eastern parts of the Trent Washlands RCA. Locally, most of the Order limits fall within the Village Farmlands with Ancient Woodlands Landscape Character Type (LCT), although they also encompass smaller parts of some neighbouring LCTs. An assessment of the sensitivity of the host landscapes is set out at Appendix A7.3 [APP-210].

3.10.8. There are no nationally designated landscapes within 30km of the Order limits and effects on national landscape designations have been scoped out of the assessment. There are also no local landscape designations within the study area.

3.10.9. The LVIA identifies the landscape and visual receptors within the study area which have theoretical visibility at Table 7.2 of the LVIA [REP6-017].

Methodology

3.10.10. The methodology follows the Landscape Institute and Institute of Environmental Assessment and Management Guidelines for Landscape and Visual Impact Assessment, 3rd Edition 2013, and various other technical guidance notes [APP-209].

3.10.11. Viewpoints have been identified to represent a range of distances, directions and receptors, located in areas of visibility identified using the zone of theoretical visibility (ZTV) studies and site survey. The viewpoint selection has also been refined through consultation.

Mitigation

3.10.12. The ES sets out the embedded mitigation measures included within the design to prevent or reduce landscape and/ or visual effects at Table 7.3 [REP6-017]. This includes site selection to avoid more sensitive landscape character types,100m set back from homes where panels would be openly visible, the diversion of PRoW and tree planting along northern boundaries and around substations and battery energy storage systems (BESS).

3.10.13. Embedded enhancement measures also seek to enhance the landscape and/ or views (Table 7.4). These include woodland, hedgerow and tree planting, the creation of a circular walking route and permissive paths and biodiversity net gain. They are aimed at contributing to the identified aspects of landscape value and sensitivity. They would be secured via the outline Landscape and Ecological Management Plan (oLEMP) [REP6-028] and outline Recreational Routes Management Plan (oRRMP) [REP5-028].

Assessment of likely significant effects

3.10.14. Consideration is given to the landscape and visual effects arising during three key stages of the development: firstly, construction and early operation, secondly operation and decommissioning, and finally after decommissioning. Effects during the operation and decommissioning stage are assessed as though permanent, as they would last for longer than the 25-year period typically defined as long-term.

Visual effects

3.10.15. Three types of visual receptors are considered within the assessment [REP6-017]:

- groups: based around settlements or rural areas
- routes: users of longer distance transport and recreational routes
- specific viewpoints: visitors to locations which are recognised and valued for the views available

3.10.16. The receptor groups and routes considered are illustrated on Figure 7.5 [APP-102]. Figure 7.6 [APP-103] illustrates the scale of change to views on completion and before mitigation. Figure 7.7 [APP-104] illustrates the scale of change to views after mitigation.

3.10.17. The viewpoint analysis sets out at Table 7.5 a summary of the viewpoints for which non-negligible effects are identified [REP6-017].

Landscape effects

3.10.18. The visibility of the panels would be mostly confined to the Village Farmlands with Ancient Woodlands LCT and the adjoining Meadowlands/ River Meadowlands LCT. Within the Village Farmlands with Ancient Woodlands LCT, it is recognised that people travelling across this area would experience repeated views of the panel areas and/ or substations at a variety of distances. This would create a close association between the experience of the landscape and the presence of the proposed development [REP6-017].

3.10.19. The effects on other LCTs are described as not significant, with the supporting analysis set out in Technical Appendix A7.5 [APP-212].

3.10.20. The significant effects after mitigation and enhancement are set out in Tables 4 to 8 below.

Table 4: significant construction and early operation effects - landscape receptors

Construction and early operation effects of significance: landscape receptors		
Receptor	Sensitivity	Impact
Mid-Nottinghamshire Farmlands/ Village Farmlands with Ancient Woodlands LCT	Medium	Major/ moderate, adverse and significant

Table 5: significant construction and early operation effects - visual receptors

Construction and early operation effects of significance: visual receptors		
Receptor	Sensitivity	Impact
Group A: Between Micklebarrow Hill and Kelham – PRoW users	High/ medium	Major/moderate, Adverse
Group B: Caunton to A617 – PRoW users	High/ medium	Major/moderate, Adverse
Group C: Between Caunton, Eakring and Kneesall – PRoW users east of Eakring and around Maplebeck	High/ medium	Major/moderate, Adverse
Group C: Between Caunton, Eakring and Kneesall – Road users	High/ medium	Major/moderate, Adverse
Group D: Between Kneesall, Caunton and Ossington Airfield – PRoW users	High/ medium	Major/moderate, Adverse
Group D: Between Kneesall, Caunton and Ossington Airfield – Road users	High/ medium	Major/moderate, Adverse
Group E: Between A1, Ossington and Moorhouse – PRoW users	High/ medium	Major/moderate, Adverse
Group F: Between Carlton-on-Trent, Ossington, Cromwell	High/ medium	Major/moderate, Adverse

Construction and early operation effects of significance: visual receptors		
Receptor	Sensitivity	Impact
and Norwell – PRoW users		
Group F: Between Carlton-on-Trent, Ossington, Cromwell and Norwell – Road users in north of area	High/ medium	Major/moderate, Adverse

Table 6: significant operation and decommissioning effects- landscape receptors

Operational and decommissioning effects of significance: on landscape receptors		
Receptor	Sensitivity	Impact
Mid-Nottinghamshire Farmlands/ Village Farmlands with Ancient Woodlands LCT	Medium	Major/ moderate, adverse and significant

Table 7: significant operation and decommissioning effects- visual receptors

Operational and decommissioning significance: on visual receptors		
Receptor	Sensitivity	Impact
Group A: Between Micklebarrow Hill and Kelham – PRoW users	High/ medium	Major/moderate, adverse
Group B: Caunton to A617 – PRoW users	High/ medium	Major/moderate, adverse
Group C: Between Caunton, Eakring and Kneesall – PRoW users east of Eakring and around Maplebeck	High/ medium	Major/moderate, adverse
Group D: Between Kneesall, Caunton and Ossington Airfield – PRoW users	High/ medium	Major/moderate, adverse
Group E: Between A1, Ossington and Moorhouse – PRoW users	High/ medium	Major/moderate, adverse

Operational and decommissioning significance: on visual receptors		
Receptor	Sensitivity	Impact
Group F: Between Carlton-on-Trent, Ossington, Cromwell and Norwell – PRoW users	High/ medium	Major/moderate, adverse

Table 8: significant after decommissioning effects- visual receptors

After decommissioning effects of significance: on visual receptors		
Receptor	Sensitivity	Impact
Group F: Between Carlton-on-Trent, Ossington, Cromwell and Norwell – PRoW users	High/ Medium	Major/moderate, Adverse and significant

Effects on residential visual amenity

3.10.21. The residential visual amenity assessment (RVAA) [APP-213] assesses the 142 homes within 250m of the proposed development at the PEIR stage. It seeks to identify where effects on residential visual amenity would be of such a nature or magnitude that this may need to be considered in the overall balance of 'residential amenity' or 'living conditions'. The point at which this happens is referred to as the residential visual amenity (RVA) threshold.

3.10.22. This assessment identified 9 individual properties as potentially experiencing large or large/ medium magnitude effects to their baseline visual amenity and requiring detailed assessment. Following changes to scheme design, mostly involving the deletion of proposed solar arrays and/ or proposed woodland, thereby reducing the potential effects on residential visual amenity, the number of properties identified as receiving large and large/ medium magnitude effects (on a precautionary basis) was reduced to six:

- Caunton Common Barn (Gr26)
- Caunton Lodge Farm (R27)
- Mainwood Farm (R38)
- The Shires (Gr46)
- Willoughby Farm (R49)
- Willoughby Barn (R50)

3.10.23. The assessment concludes that the effects would not be at the highest level of magnitude for any of these properties. There would therefore be no potential for the RVA threshold to be exceeded at any homes as a result of the construction and/ or operation of the proposed development.

Cumulative effects

3.10.24. The LVIA [REP6-017] sets out that existing development, including operational solar farms, is included as part of the landscape and visual baseline. Consented development forms part of the future baseline and is also considered to form part of the baseline for this assessment. Consented developments of relevance to the landscape and visual effects are the solar farms near Winkburn, Knapthorpe Lodge, Muskham Wood and Tuxford Road.

3.10.25. The revision 3 update to the LVIA [REP6-017] also notes that whilst the applications for the SSE battery energy storage system at Staythorpe (the SSE BESS) and the Kelham solar farm were consented during the examination stage, they are considered as part of the cumulative effects assessment rather than being included in the future baseline. In addition, the cumulative assessment also includes the solar farms in planning at Foxholes and One Earth. Other cumulative developments include the improvements to the A46 around Newark and the potential application for carbon capture and storage at Staythorpe Power Station.

3.10.26. The overall conclusion sets out that the only cumulative scenario in which effects arising from the proposed development would be different relates to the presence of the Kelham solar farm. If this were present, there would be some slight reductions in the landscape and visual changes caused by the proposed development, though no change in the magnitude or level of effects.

ISSUES CONSIDERED DURING THE EXAMINATION

3.10.27. The main issues considered in the examination related to:

- the assessment methodology and conclusions
- assessment of visual effects
- response to landscape character
- effectiveness of mitigation measures
- assessment of the effects of the proposed development alongside existing and consented development
- residential visual amenity

The assessment methodology and conclusions

3.10.28. In its relevant representation (RR) and LIR [RR-156, REP1-075], Newark and Sherwood District Council (NSDC) expressed concerns about the methodology for assessing landscape and visual effects, in which only impacts identified as major or major moderate are considered significant. Those identified as being moderate are not judged as significant. Specifically, it referred to the LVIA methodology [APP-209] which states that where "moderate effects are predicted, professional judgement is applied to ensure that the potential for significant effects arising has been thoroughly considered".

3.10.29. During the course of the examination, further discussion between the parties resulted in the conclusion that, rather than amend the significance threshold for the LVIA, NSDC would review those effects judged as being moderate to identify whether any of these should, in its professional opinion, be considered to be significant. As result, the final signed statement of common ground (SoCG) with NDSC sets out that, with the exception of the assessment of cumulative effects which is considered further below, the scope and methodology used for the LVIA is acceptable [REP6-042].

3.10.30. Some interested parties (IP) suggested that the unusual configuration of the proposed development, meant that the methodology for assessing impacts is not straightforward [REP1-091, REP2-122, REP2-130, REP3-112]. It was suggested that the general approach of identifying the ZTV is not sufficient. The fact that the proposed development would encircle some communities, noting also the restrictions to travel caused by the River Trent and the railway line, mean that the implications for the regular journeys made by local people have not been properly considered. Specific points made in relation to the consideration of sequential effects are considered further below (3.10.73-3.10.82). More generally, the applicant acknowledged the nature of the day-to-day movements undertaken by local residents but maintained that the visual effects on these identified routes are captured within the LVIA [REP3-098].

3.10.31. Some IPs expressed concerns about how well wireline illustrations can represent visual effects [RR-025, RR-047, RR-214]. The applicant's response [REP2-116] set out that wirelines are the primary technical visualisations which inform the assessment, with photomontages provided as additional illustrations. In the ExA's second written questions (ExQ2) Q11.2.2 [PD-011], the applicant was asked to clarify the basis of the decision to include either wirelines or photomontages for particular viewpoints. The applicant responded that photomontages have been used for the viewpoints where effects would be greatest, as agreed with NSDC. Nonetheless, they noted that wirelines have the benefit of allowing the assessor to consider the potential impact in the absence of leaves on trees and other transient features that may be included in a viewpoint photograph [REP4-060].

3.10.32. IPs queried the use of summer views to illustrate viewpoints, suggesting that they do not take into account the winter months when the trees are bare of leaves and the full impact of the proposed development would be more apparent [RR-035, REP4-074]. In response to ExQ2 Q11.2.3 [PD-011] on this point, the applicant noted that the guidance only requires that consideration should be given to the seasonal differences in effects arising from the varying degree of screening and/ or filtering of views by vegetation that will apply in summer and winter when predicting and describing visual effects. The assessors judged effects on site rather than by referring to the photomontages, with the LVIA describing differences in effects in winter where this is of particular relevance [REP4-060]. For example, paragraph 256 sets out that for the "bridleway and footpath near Egmanton Common Farm there would be elevated views towards the solar panels on facing slopes south of Moorhouse, backed by woodland, and views of more nearby

solar panels through the field entrance and gaps between trees in winter to the east" [REP6-017].

3.10.33. IPs also expressed concerns about the adequacy of viewpoint selection in representing the impacts of the proposed development [RR-025, RR-035, AS-078]. In response the applicant noted that the selection of viewpoints was agreed with NSDC [REP6-042]. The applicant also provided responses to IPs addressing particular points of concern, for example in response to ExQ1 Q11.1.8 [REP2-117]. More generally, the applicant noted that, in accordance with published guidelines, viewpoints are not intended to be exhaustive and do not cover every possible view of the site. Rather, they should be selected to proportionately represent the range of views available, taking into account the activity and sensitivity of visual receptors [REP2-116].

3.10.34. Finally, during issue specific hearing (ISH)1 discussions [EV3-001, EV3-003], questions arose about the distinction between landscape mitigation and enhancement measures and how they have been measured. JPAG noted that a significant proportion of the hedgerow and tree planting proposed have been identified as being required for the mitigation of landscape and visual impacts. They should not therefore be regarded as providing enhancement and the possibility that there could be double counting must be avoided [REP2-130].

3.10.35. In response at action point 13 of ISH1 [REP1-068], the applicant states that whilst mitigation is required by the Environmental Impact Assessment (EIA) Regulations, enhancement is optional. Mitigation is therefore the more important of the two and ensuring that each mitigation measure is explicitly identified as such is essential. More generally, the purpose of the EIA assessment is not to explicitly classify the various design measures but to report effects. In reporting such effects, the fact that a part of the development is entirely or primarily proposed as a mitigation measure does not remove the need to report other effects that may arise from it.

ExA's consideration

3.10.36. Whilst noting the concerns of IPs, the ExA is satisfied that the applicant has adequately justified the LVIA methodology. Specifically, the ExA accepts the applicant's explanations relating to the configuration of the proposed development and how this has been represented in the LVIA, the approach to visualisations and the approach to mitigation and enhancement.

3.10.37. Based upon the above considerations, the ExA has no substantive concerns regarding the applicant's assessment methodology and is satisfied that it is in line with the provisions set out in section 5.10 of EN-1 and section 2.10 of EN-3.

Assessment of visual effects

3.10.38. During the examination NSDC highlighted concerns relating to the effects of the proposed development on road users in receptor Group F between Ossington Road and Thornton, specifically the road users between Ossington and the A1/ Carlton on Trent, where it was suggested that the

presence of solar arrays would form an almost continuous experience. The nature of the concern was further clarified in response to ExQ2 11.2.4 [REP4-062]. Nonetheless, as the applicant's LVIA identifies effects on road users in receptor Group F as being major/ moderate and significant during both the construction and early operation stage and the operation and decommissioning stage of the proposed development, this matter was ultimately agreed in the final signed SoCG [REP6-042].

3.10.39. Some IPs referred to the encircling of villages and homes by the proposed development [REP1-091, REP1-127]. In response, the applicant acknowledged that whilst on plan, some settlements may appear to be 'surrounded', the design is set back from villages where proximity would lead to open and close views and that this would take advantage of natural screening by terrain and vegetation. In this regard reference was made to the embedded mitigation measures set out in Table 7.3 of the LVIA [REP6-017]. As a result, significant effects on settlements would be avoided [REP2-115].

3.10.40. Eakring Parish Council referred to the loss of views from PRoW, for example from the Robin Hood Way where the route passes close to the proposed development near to Eakring [REP1-073]. In response, the applicant referred to the LVIA Technical Appendix A7.5 [APP-212] which notes that, for part of this route, walkers from both directions would see nearby solar panels approximately 60m ahead of them. It also sets out that in this area to the east of Eakring, pylons of various types are a more eye-catching feature, meaning that the scale of effect would be medium to medium/ small [REP2-116].

3.10.41. In the case of concerns raised by Averham Kelham and Staythorpe Parish Council about the effects on PRoW users around the hamlet of Averham Park [REP1-070], the applicant notes that the visual effects in this area are considered in the LVIA as part of receptor group B [REP2-116]. The LVIA acknowledges major/ moderate adverse effects during construction/ early operation, and operation/ decommissioning. Specifically, it is acknowledged that effects would remain large scale and adverse for the routes west of Averham Park Farm where the proposed hedges would block currently open elevated outlooks to the west and south [REP6-017].

ExA's consideration

3.10.42. The ExA has considered the range of general and specific concerns raised about the visibility of the proposed development. This includes during a site visit in relation to the effects on Robin Hood Way, where the ExA was able to observe pylons and other infrastructure in this area [EV1-002]. More generally, the ExA is mindful of the recognition at EN-1 at paragraph 5.10.13 that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. Overall, the ExA's view is that the applicant has adequately considered the effects of the proposed development on visual receptors.

Response to landscape character

3.10.43. IPs raised concerns about how the applicant has responded to landscape character, noting the undulating nature of local topography and the resulting

visibility of solar array areas in some locations [RR-044, RR-136, REP1-094, REP1-137, REP2-140]. The question of how the applicant has sought to respond to the undulating topography of the area was raised in ExQ1 Q11.1.4 [PD-008]. The applicant's response noted that mitigation relating to topography was undertaken very early in the design process during land assembly. For example, this resulted in solar arrays being omitted from fields on steeper slopes southwest of Kersall and the fields east of Eakring where solar arrays were removed from fields which slope west towards the village and local roads [REP2-116].

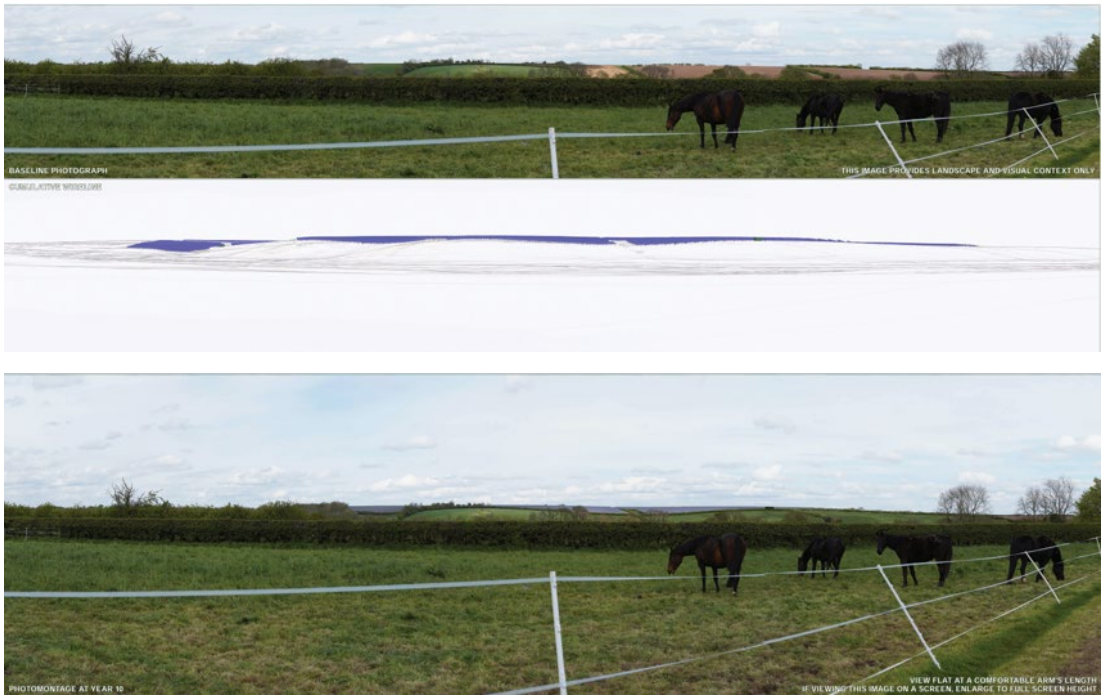
3.10.44. IPs also expressed concerns that the proposed development would lead to an industrialisation of the countryside over an extensive area [RR-035, RR-038, RR-049, RR-085, RR-115, RR-201, REP1-073, REP1-127]. Others note that it would not achieve policy requirements relating to the conservation of landscape character [RR-213] and cannot be fully mitigated [RR-201]. In response, the applicant referred to the LVIA which acknowledges that at all stages the proposed development would lead to significant effects on the Mid-Nottinghamshire Farmlands: Villages Farmlands with Ancient Woodlands LCT (the main host LCT) which would accommodate most of the solar arrays. There would also be non-significant effects during all stages for the other local LCTs [REP1-065].

3.10.45. A specific disagreement between NSDC and the applicant remained in relation to the effects on the Meadowlands LCT. The LVIA assessed the effects for this LCT as being moderate adverse during both construction/ early operation and operation/ decommissioning, whilst NSDC considered that the effects would be significant.

3.10.46. In clarifying its position on this point in response to ExQ2 11.2.4 [PD-011], NSDC set out that there would be pockets of the LCT near Maplebeck and east of Moorhouse that would be heavily influenced by the proposals. Although such impacts would be limited directly by the fact that the proposed development would be located mostly outside this LCT, there would be an impact on the perceptual qualities of the landscape which should be regarded as significant [REP4-062].

3.10.47. By way of illustration, NSDC referred to two specific viewpoints within the Meadowlands LCT as demonstrating how parts of the LCT would be heavily influenced, including viewpoint 5 (Figure 18). The applicant maintained its position that the effects on this LCT would not be significant [REP6-064].

Figure 18: Viewpoint 5(A): Baseline photomontage and cumulative wireframe; and photomontage at Year 10



Source: [AS-036]

3.10.48. Ossington Solar Concerns Group raised specific concerns about the effects on the area around Ossington noting the open character of the former Ossington Airfield [RR-168, REP1-135]. In response, the applicant referred to the open and flat nature of the airfield which is distinct from the surrounding area. However, it is not identified as a separate or particularly sensitive character type by any of the relevant baseline character studies. This includes at the finest grained assessment level set out in the Newark and Sherwood Landscape Character Assessment SPD. The recommended management actions for this area do not include retaining the openness or particular character of Ossington Airfield [REP2-116].

3.10.49. The applicant set out that the introduction of new hedgerow would form a neutral or positive change as it would bring the character of the Airfield closer to that of the rest of its character type. Nonetheless, the LVIA recognises that, as part of visual receptor group D, there would be significant adverse changes to views from the road through the Airfield associated with the increased enclosure of views brought about by new hedging. The effects would be major/ moderate adverse for both road and PRoW users during construction/early operation and would remain major/ moderate adverse for PRoW users during operation/ decommissioning [REP2-116].

ExA's consideration

3.10.50. EN-1 paragraph 5.10.6 sets out the need to minimise harm to the landscape and provide reasonable mitigation. More specifically, paragraph 5.10.12 sets out that where local policies are based on landscape character assessments, these should be paid particular attention. In this regard the NSDC Amended Core Strategy Policy 13 seeks to secure new development which positively

addresses the implications of relevant landscape policy zones that is consistent with the landscape conservation and enhancement aims for the area.

3.10.51. Looking at the concerns raised by NSDC in relation to the effects on the Meadowlands LCT, the ExA was able to observe the nature of this LCT on site [EV1-003]. It is apparent that, in contrast to the varied undulating topography and areas of woodland that characterise the main host LCT, the Meadowlands LCT is characterised by flat alluvial flood plains, mixed agriculture and areas of trees and scrubland. This suggests that for the Meadowlands LCT there would be higher susceptibility to the change brought about by the introduction of solar array areas in comparison with the main host LCT.

3.10.52. Nonetheless, noting that effects would be felt on two small pockets of this LCT, for which some visibility of solar panels would remain after mitigation, overall the applicant's assessment of moderate, not-significant adverse effects remains robust.

3.10.53. More generally, the ExA is satisfied that the applicant has appreciated the existing landscape character in both the siting of the proposed development and the assessment of its impacts.

Effectiveness of mitigation measures

3.10.54. IPs expressed concerns about the effectiveness of the mitigation proposed and how long it would take to establish [RR-162, RR-213]. They suggested that mature trees and shrubs be incorporated to assist with assimilating the development from an early stage, along with a comprehensive maintenance strategy to ensure the long-term effectiveness of enhancements from the outset.

3.10.55. The applicant set out that the majority of the mitigation would rely on the growth of existing hedges, which would be effective more quickly than new planting. Some new hedges along northern boundaries would also include tree planting [REP6-017]. This approach would not be used along other boundaries in order to avoid trees shading solar arrays. Mature stock is typically not used as it often establishes less successfully and requires greater maintenance than younger plants. Furthermore, no particularly sensitive views were identified that would warrant the planting of larger stock [REP1-065].

3.10.56. Egmanton Parish Meeting made specific requests for further mitigation, for example around Moorhouse [RR-047, REP1-088]. In response, the applicant noted that the purpose of mitigation is not to remove all views of the proposed development, but to mitigate potentially significant effects.

3.10.57. Others observed that the large-scale use of hedging around Laxton and Moorhouse would exacerbate the loss of views and that the enclosure of rural footpaths would change them into sterile walkways [RR-113, REP1-095]. In response the applicant noted that double hedges are not untypical to

the east of Moorhouse. Nonetheless, the LVIA identifies that for some places where open views are important, adverse effects would remain after hedges have grown due to the loss of such views. For example, this is illustrated in Figure 7.6 and Figure 7.7 [AS-035] in relation to the large and medium scale of change to the PRoW to the north-east of Moorhouse before and after mitigation [REP1-065].

3.10.58. NSDC raised concerns about the removal of the second hedgerows planted in association with permissive routes at decommissioning [RR-156], reiterated by others [REP4-061]. This was discussed at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], in which NSDC set out that the intent in the ES to remove hedgerows at decommissioning stage was considered counter-productive, particularly where associated with diverse grasslands.

3.10.59. In response, the applicant set out that whilst the removal of those hedges would bring to an end the beneficial landscape effects that would arise during operation, it would mitigate effects on agricultural land by enabling the land to return to agriculture rather than leaving the fields subdivided. Future landowners may choose to retain the permissive routes and their associated hedges, returning the land to its original condition, but the assessment has made a 'worst case' assumption that hedges would be removed [REP5-044, REP6-042].

ExA's consideration

3.10.60. EN-1 paragraph 5.10.6 sets out that having regard to siting, operational and other relevant constraints, the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. In this regard the ExA is satisfied that the applicant's assessment has adopted a reasonable approach to landscape and visual mitigation measures in terms of the use of both existing and new screening measures, as well as appropriately balancing the screening of some views with maintaining the open views that characterise the area.

Assessment of the effects of the proposed development alongside existing and consented development

3.10.61. The extent of concerns about the landscape and visual effects of the concentration of energy infrastructure locally and in the wider sub-region was clearly expressed in relevant representations (for example [RR-001, RR-020, RR-074, RR-136, RR-172, AS-076]). The matters raised under this heading are:

- the identification of the baseline for assessment
- consideration of the Kelham Solar Farm
- the approach to consideration of regular or sequential views
- the assessment of regional landscape scale effects.

Identification of the baseline for assessment

3.10.62. As a starting point the ExA sought to explore the basis for the applicant's approach to establishing the baseline for the assessment of landscape and visual effects, which includes operational developments.

3.10.63. The LVIA [REP6-017] section 7.5.4 sets out that existing development within the study area and surrounding context is included as part of the landscape and visual baseline. Also, the applicant clarified at ISH1 [EV3-001, EV3-003], that as consented schemes are likely to be built before the early operational phase of the proposed development, they were included in the landscape baseline rather than cumulative assessment. In this regard the consented solar farms near Winkburn, Knapthorpe Lodge, Muskham Wood and at Tuxford Road were identified as being of particular relevance to landscape and visual effects (shown in Figure 19).

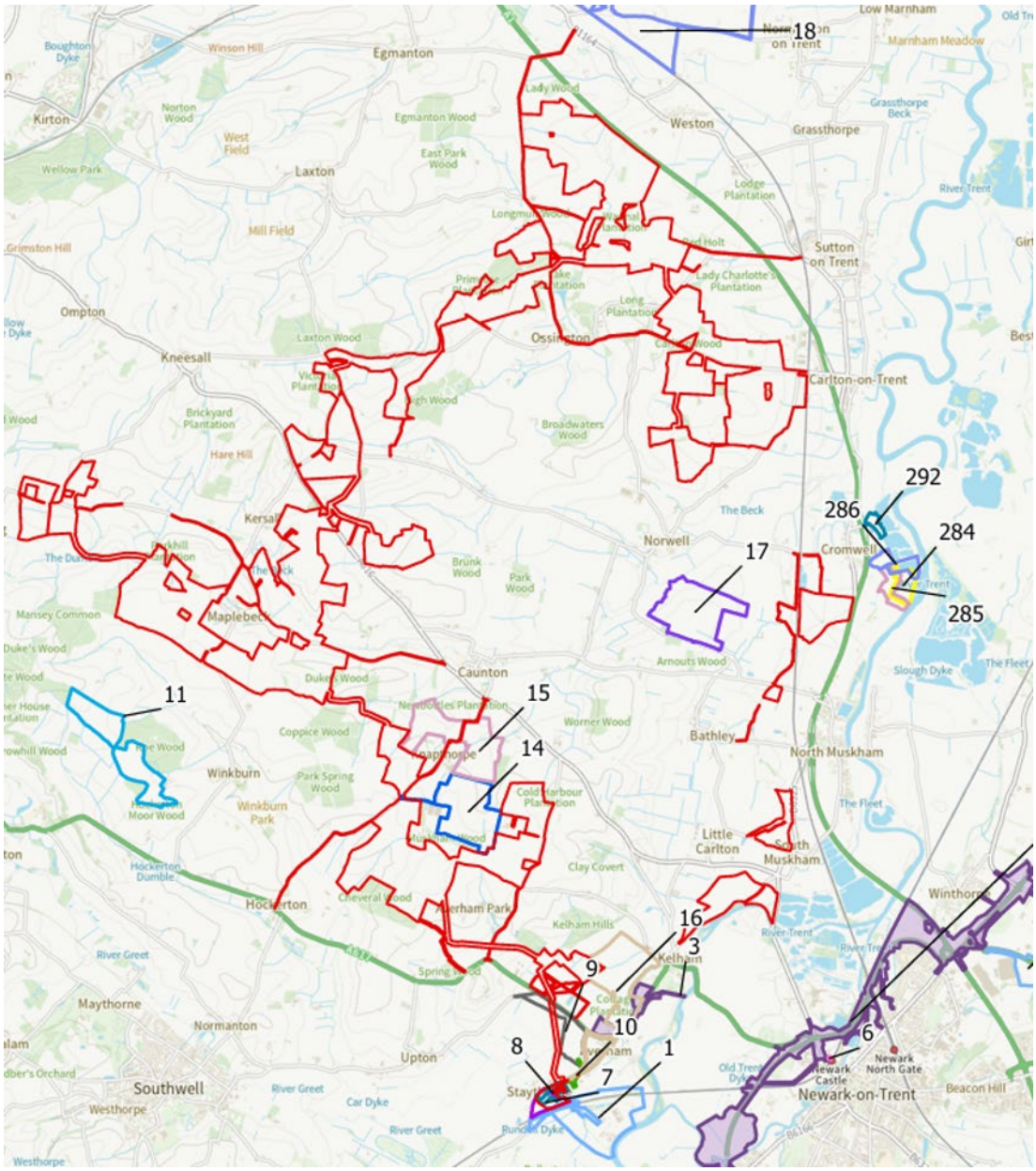
3.10.64. Appendix 3 of the applicant's summary of ISH1 [REP1-068] provided further clarification of the basis for the applicant's approach to the assessment of cumulative landscape and visual effects. This referred to PINS guidance which sets out that "where other projects are expected to be completed before construction of the proposed NSIP and the effects of those projects are fully determined, effects arising from them should be considered as part of the baseline and may be considered as part of both the construction and operational assessment."

3.10.65. This matter was also raised in ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], with NSDC continuing to express concerns about the cumulative assessment. It was agreed that this could be addressed through the provision of further details setting out what the landscape and visual effects would be without consented projects in the baseline.

3.10.66. The applicant provided this information at Appendix A of the ISH3 summary [REP3-101]. It addressed the scenarios of the consented solar farms near Knapthorpe Lodge, Muskham Wood and at Tuxford Road not being constructed, or being constructed after the proposed development. The conclusion was that there would be some minor differences in terms of the effects on the main host LCT and visual receptor group B area near Knapthorpe, if Knapthorpe Lodge and/or Muskham Wood solar farms were not constructed. However this would not alter the overall assessment of effects for the relevant landscape and visual receptors.

3.10.67. By the end of the examination, in response to ExQ2 Q11.2.5(i), NSDC agreed with the applicant's approach on this point [REP4-062]. However, other IPs disagreed, suggesting that this approach is misleading as consented developments do not currently shape the character of the area [REP2-138, REP2-118].

Figure 19: Cumulative applications: 11 – Winkburn Solar; 14 - Muskham Wood Solar; 15 – Knapesthorne Solar; 16 - Kelham Solar; 17 - Foxholes Solar; 18 – Tuxford Road Solar Farm

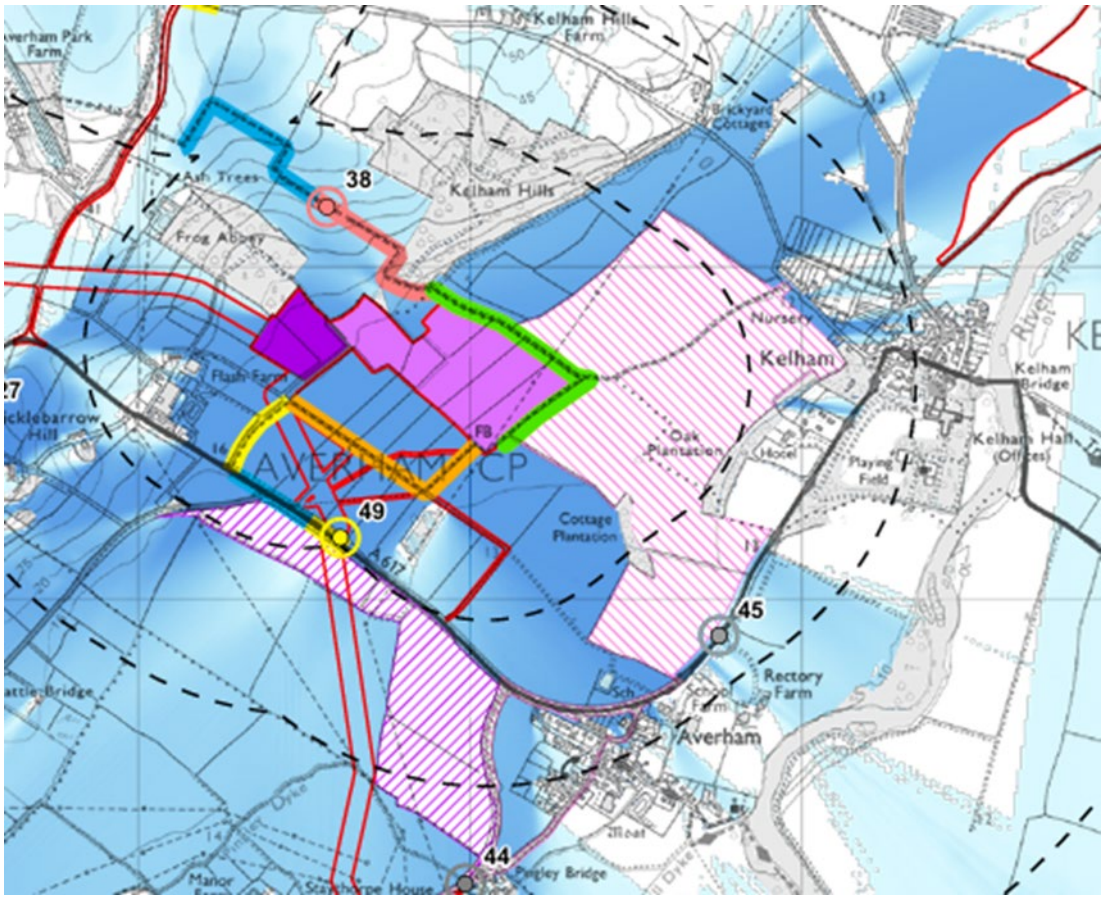


Source: Figure A2.1.1a, [REP5-019]

Consideration of the Kelham Solar Farm

3.10.68. During the course of the examination the Kelham Solar Farm gained planning approval [REP1-093], with Averham Kelham and Staythorpe Parish Council expressing concern about the cumulative effects of this scheme with the proposed development [REP1-070]. The general location of this development is shown in Figure 19. Figure 20 illustrates in greater detail the proximity of the BESS and 400kV substation associated with the proposed development alongside the Kelham Solar Farm and the SSE BESS.

Figure 20: Cumulative Effects with Kelham Solar Farm and SSE BESS: 400kV substation solid pink; BESS solid purple; Kelham Solar Farm hatched light pink; SSE BESS hatched dark pink



Source: Figure 7.10 [APP-107]

3.10.69. The applicant set out that the Kelham Solar Farm had already been considered in the LVIA cumulative assessment [REP2-116]. The LVIA [REP6-017] sets out that if the Kelham Solar Farm were present, there would be a reduction in the extent of changes to landscape character brought about by the proposed development, with its effects therefore being slightly reduced. Similarly, the LVIA suggests that at viewpoint 45 on the A617/ Trent Valley Way, the scale of change arising from the proposed development would be negligible as the foreground of this view would be occupied by the Kelham Solar Farm (illustrated in Figure 21).

Figure 21: Viewpoint 45 (B) at Averham, baseline photograph and cumulative wireline with location of Kelham solar farm indicated in red



Source: [AS-039]

3.10.70. At ExQ1 Q11.1.13 [PD-008] the ExA sought to explore the rationale for these conclusions. In its response to this question JPAG [REP2-130] set out that the proposed BESS and 400kV substation for the proposed development would be on rising land, meaning that in viewpoint 45 these elements would be visible above the Kelham Solar Farm, with the rising topography emphasising the combined depth of both schemes. NSDC also noted that the proposed development along with the Kelham Solar Farm would increase the extent of industrial features within the wider landscape [REP2-120].

3.10.71. The applicant reiterated its position that with the presence of Kelham Solar Farm there would be a reduction in the extent of changes to landscape character as views of the nearby BESS and 400 kV substation would not alter the character of the land within Kelham Solar Farm. However, this would not alter the magnitude of impact or level of effects identified in the LVIA. At viewpoint 45 the scale of change would reduce from small and adverse in the absence of Kelham Solar Farm to negligible with Kelham Solar Farm present [REP2-117]. More generally, the applicant set out how mitigation measures would be managed, noting that a detailed landscape and ecological management plan for each phase must be submitted to and approved by NSDC prior to that phase commencing [REP2-116].

3.10.72. Overall, the applicant considered that the cumulative effects of the proposed development with Kelham solar farm would remain the same as assessed in the main LVIA, despite minor and localised reductions in changes to character and views within and adjacent to the Kelham Solar Farm site.

The approach to consideration of regular or sequential views

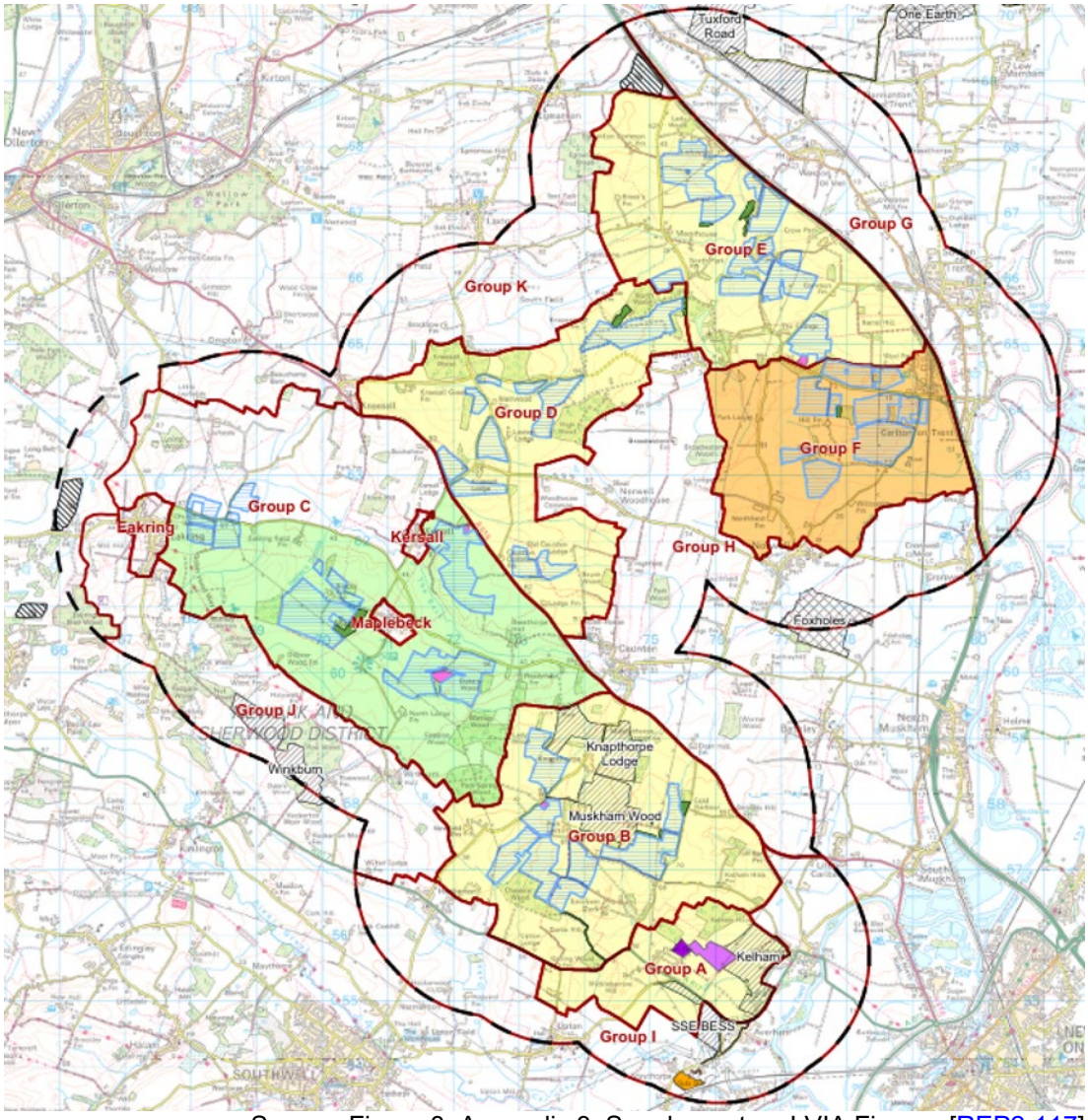
3.10.73. In its LIR NSDC [REP1-075] set out its concerns that the cumulative impacts on receptors as they move through the landscape have not been assessed. It suggested that the LVIA needs to address receptors on PRoWs and local roads, who are moving through this landscape across several kilometres. In this regard IPs also pointed out the range of locations associated with both occasional and frequent sequential views [REP1-122, REP2-119, REP2-130] and, more generally, the regularity with which solar panels would be experienced when travelling around the area, whether driving, walking, cycling or riding along routes [REP1-130, REP-122, REP2-118, REP2-138].

3.10.74. The approach to the consideration of the regularity or frequency of views of solar development as part of the cumulative assessment was discussed in ISH1 [EV3-001, EV3-003]. On this point the applicant set out that visual effects have been assessed through the consideration of visual receptor ‘groups’ and ‘routes’. Visual receptor ‘groups’ have been based on settlements or rural areas and represent the effects on the community within public spaces, including streets and local recreational routes in that place.

3.10.75. This approach means that the LVIA has assessed visual effects on every PRoW and local road within the study area, and also each of the longer distance routes through the study area ([REP1-068], Appendix 3). The nature of the assessment of effects on receptor groups after mitigation is illustrated

in the supplementary LVIA figures 3, 4 and 6 at Appendix 3 of the applicant's response to first written questions [REP2-117]. As an example, Figure 22 summarises the assessed effects on PRoW users, after mitigation.

Figure 22: Level of effects on PRoW users after mitigation: Orange – major/moderate adverse; yellow – moderate adverse; green moderate/minor adverse



Source: Figure 3, Appendix 3, Supplementary LVIA Figures [REP2-117]

3.10.76. The applicant's position was that having an additional sequential assessment for the local movements along specific routes identified by IPs would not alter the magnitude or levels of effect reported in the LVIA [REP3-098].

3.10.77. In response to concerns expressed about the extent and frequency of sequential views of solar infrastructure, the applicant updated Appendix A7.5: Non-Significant Effects, which refers to the LVIA where the level of effect is judged to be lower than major/ moderate [REP3-044]. The update set out more description of sequential views from the main routes through the study area, including the A1, East Coast Main Line, A616 and A617. However, this resulted in no alteration to the assessed effects.

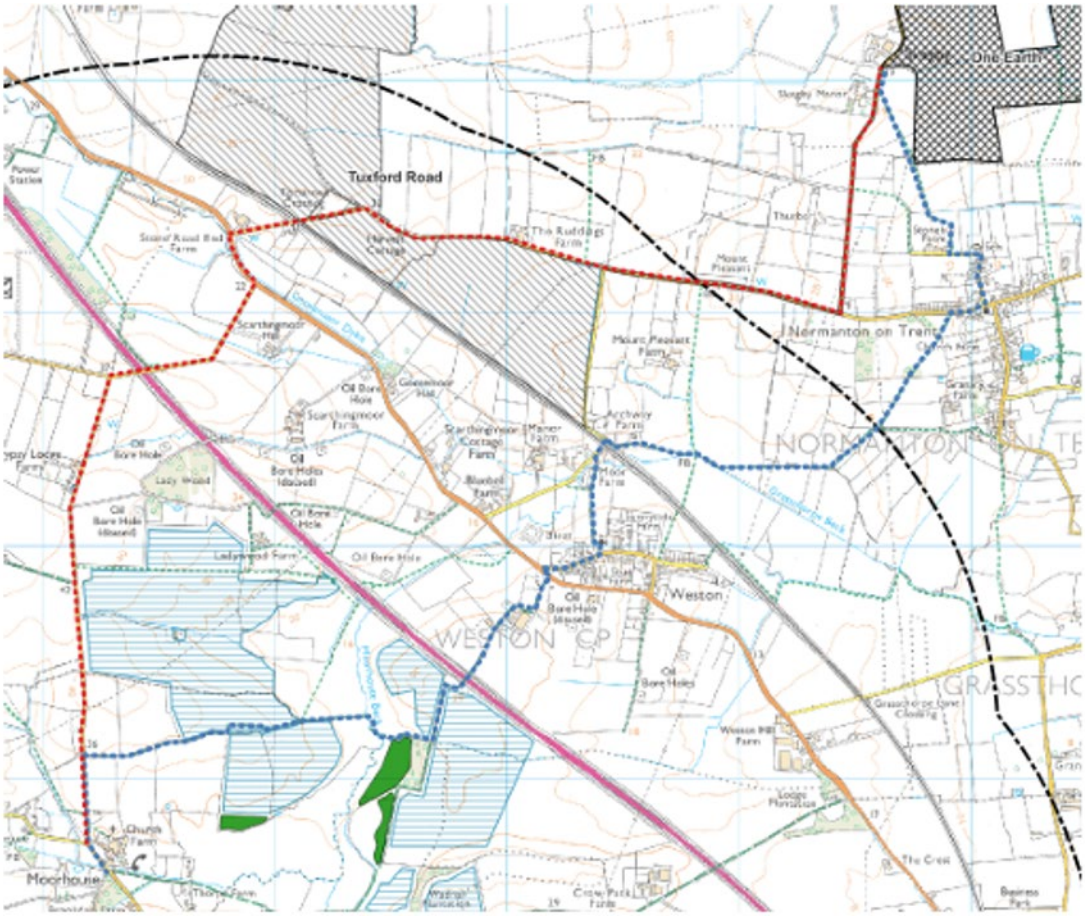
3.10.78. ExQ1 Q11.1.12(c) [PD-008] sought to address concerns about the regularity of experience of solar development when moving across the wider landscape. On this, the applicant's position was that the LVIA considers effects across the agreed 2km LVIA study area, including all operational and consented cumulative shortlisted projects. Beyond this, detailed cumulative sequential assessment is typically only undertaken for long distance routes, as may be required to inform a joint decision about two adjacent developments. The only potentially relevant NSIP project is One Earth solar, however it is likely that One Earth will have been decided before a decision on the proposed development is made. Therefore, combined cumulative effects have not been considered in the LVIA for the proposed development as the decision to be made in this instance relates solely to whether or not this development should be consented [REP2-117].

3.10.79. Additionally, during the discussion at ISH1 [EV3-001, EV3-003], NSDC made reference to the approach to sequential assessment undertaken as part of the examination of the Tillbridge Solar Farm [REP1-068]. In response the applicant noted that the LVIA in that case focused on specific viewpoints, with the ExA concluding that this approach neglected the sequential cumulative effects experienced when receptors move through the landscape. In contrast, whilst the current LVIA includes operational and consented developments as part of the baseline, it also explicitly considers the extent of effects on PRoW and local roads (which includes repeated views) in reaching magnitude judgements ([REP1-068], Appendix 3).

3.10.80. In discussions with the applicant, NSDC requested additional assessments of the sequential effects on routes between Moorhouse and Skegby, noting the close proximity of the proposed development to existing and proposed solar development at Egmanton, Tuxford and the One Earth Solar Farm. This was provided as part of a technical note [REP3-101], with Figure 23 below identifying the selected road route and PRoW route.

3.10.81. The analysis presented by the applicant acknowledged the regularity of glimpsed views of solar development for road users and some large/ medium scale changes to views for PRoW users. The conclusion was that any changes to landscape receptors would be negligible, noting that the landscape to the east of the A1 would already be perceived as including nearby solar farms due to the presence of Egmanton and Tuxford Road solar farms. Adding relatively distant views of the proposed development to this would give rise to a negligible change to character (with or without the One Earth Solar Farm).

Figure 23: Route between Moorhouse and Skegby: road route in red; PRoW route in blue



Source: Appendix A: Cumulative LVIA Technical Note 2, Inset 1 [REP3-101]

3.10.82. Specific concerns were raised by IPs in relation to the hamlet of Knapthorpe, highlighting the cumulative effects associated with the close proximity of consented solar schemes being visually overbearing [REP5-051]. In response, the applicant set out that there is no evidence to show that different or additional significant visual effects would be expected to arise on the settlement of Knapthorpe because of the proposed development [REP6-064].

The assessment of regional landscape scale effects

3.10.83. NDSC set out in its LIR that given the extent of schemes now being consented, and the increase in NSIPs in the examination stages, there is a requirement to consider the impacts of the proposals in combination with the identified schemes on the wider landscape area. It set out that renewable energy is identified in the LCAs as having the potential to change the landscape character. Previously this has been relatively well controlled so that the region's rural character, and the historic settlement pattern of small red brick villages, is still intact. However, this is now at risk [REP1-075].

3.10.84. In response, the applicant set out that it is not the function of the cumulative assessment for an individual project to provide an evaluation of such change. The purpose of cumulative assessment is to inform the decision to be made

relating to that project. Further, it was noted that the landscape and visual effects arising from the proposed development with all relevant short-listed cumulative projects have been assessed not only on the local LCTs, but also the RCA (Mid-Nottinghamshire Farmland) and NCA (NCA 46 Trent and Belvoir Vales). Given that these areas extend beyond the 2km study area, the LVIA therefore does consider the effects of the proposed development on landscape character more widely [REP2-116].

3.10.85. Following discussion on this point at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], NSDC agreed to submit a technical memorandum on cumulative effects and impact on visual character at a strategic scale [REP3-107]. This addressed its view that whilst the LVIA does follow cumulative assessment guidance, the guidance itself does not address 'regional and strategic' cumulative landscape character impacts.

3.10.86. This critique set out that a cumulative assessment based on individual landscape character areas (from local to national scale) is too restrictive when considering the widespread change the region is undergoing through the development of large-scale solar schemes, BESS and other energy infrastructure. As a result, it was suggested that the assessment underplays the progressive strategic level landscape change occurring across the region, specifically the effects on the character, openness and rural qualities of the Trent Valley landscape. The concern was that this is leading to an emergent landscape type with energy infrastructure being a key feature, rather than its historic agricultural character [REP3-107].

3.10.87. NSDC also made reference to reports and articles which refer to the assessment of the combined effects of multiple developments, though without specific details to support an alternative approach. Nonetheless, in response to ExQ2 11.2.5iii [PD-011], NSDC maintained its position that this change in land use and the more continuous experience of solar arrays moving through the landscape would result in significant effects at the strategic level [REP4-062]. Interested parties supported this view (for example [REP4-061]).

3.10.88. In response, the applicant set out that the solar farms referred to largely lie within NCA 48 Trent and Belvoir Vales. As such this NCA is the receptor which would be affected by the combined change. It set out that energy infrastructure is already a feature of this landscape, with the list of key characteristics indicating that "immense coal-fired power stations in the north exert a visual influence over a wide area, not just because of their structures but also the plumes that rise from them and the pylons and power lines that are linked to them. The same applies to the gas-fired power station and sugar beet factory near Newark, albeit on a slightly smaller scale" [REP4-059].

3.10.89. Following the discussion at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008], the applicant presented further assessment of the regional scale landscape in terms of how it has been shaped by its unique geology and geography. This set out how landscape change can be directly traced to the legacy of the coal fields and the River Trent which have strongly influenced the shaping of

the regional landscape character for the purposes of generating power since the 1960's [REP3-101].

3.10.90. The ExA sought the views of IPs on this point at ExQ2 Q11.2.7 [PD-011]. In response, JPAG acknowledged that the area has been and continues to be a focus for major industrial development including mineral extraction. It referred to the strong historical inter-relationship between the existing and former power station sites along the River Trent valley and that these grid connections are a focus for energy and other infrastructure proposals. However, noting the scale of the proposed development and that it would involve the industrialisation of the agricultural heartland that is already penned in between existing infrastructure and former/ existing industrial uses, the concern is that the landscape opportunities identified by Natural England for the NCA would not be delivered [REP4-074].

3.10.91. In considering these points, the applicant set out that whilst there is no requirement for development to contribute to the opportunities identified by Natural England, the development would make a positive contribution to some, including the enhancement of tree cover [REP5-044].

ExA's consideration

3.10.92. The ExA acknowledges and appreciates that the concerns of NSDC and IPs relate in large part to the accelerated process of landscape change that has been, and will continue to be, brought about by successive consents for solar farms and other energy infrastructure in this area.

3.10.93. Nonetheless, the ExA accepts the applicant's position that the LVIA has been prepared in accordance with policy and guidance on cumulative assessment, noting particularly the comprehensive nature of the analysis by visual receptor groups. This includes the approach to the consideration of proposed and newly consented schemes, for which the applicant has set out both the implications of considering consented schemes either as part of the landscape baseline, or cumulatively, for the significance of assessed effects.

3.10.94. In reaching this view, the ExA has considered the effects on various visual receptors on site, including the effects on PRoW around Moorhouse and Weston [EV1-002, EV1-003].

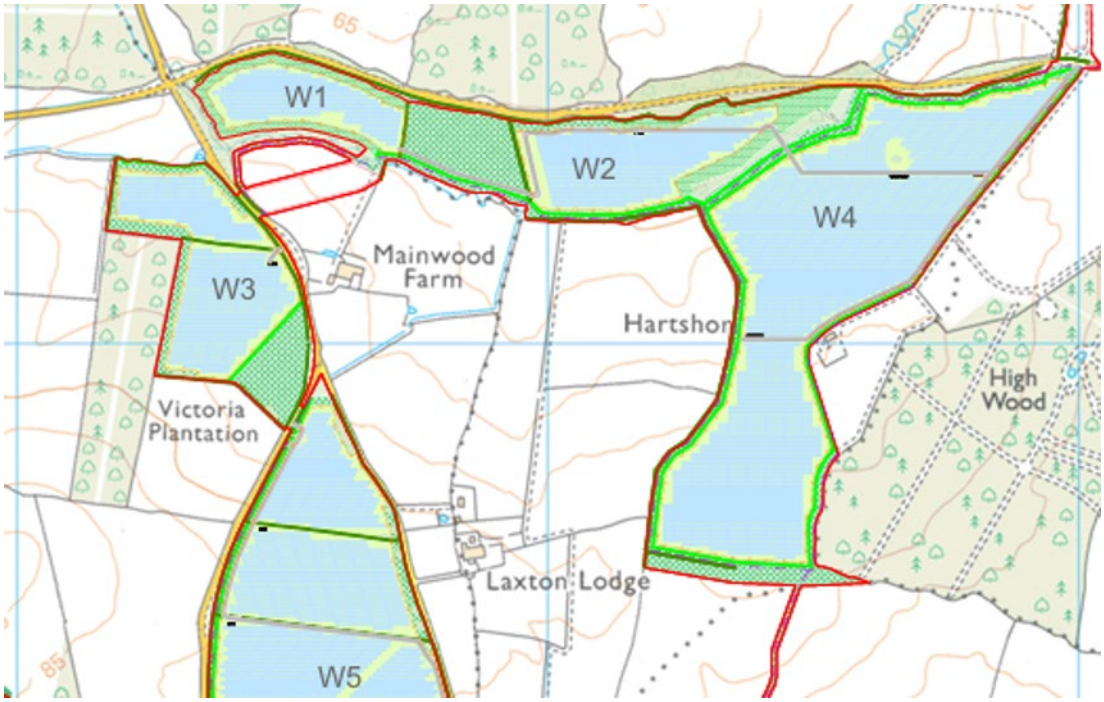
3.10.95. Overall, the approach to the consideration of the effects over the wider region is reasonable, with the 2km study area recognising the effects of the proposed development within the wider context of development and change. Further, the effects on the host NCA have been considered to a proportionate degree.

Residential visual amenity

3.10.96. Whilst the applicant's RVAA [APP-213] concludes that the RVA threshold would not be exceeded at any residential property as a result of the construction and/ or operation of the proposed development, a number of IPs challenged this point.

3.10.97. The occupants of Mainwood Farm raised concerns about the proximity and visibility of proposed solar array areas in relation to their property on land that rises to the north, east and west [RR-169, RR-174]. An extract of Figure 5.2, the landscape masterplan, is provided at Figure 24. The ExA visited this property as an access required site inspection (ARSI) and was able to view it in context [EV1-002]. This property is set back from a minor road with buildings arranged around a central courtyard/ garden with a larger wraparound garden. There are open views of fields and intermittent hedgerows, trees and woodland beyond this, particularly to the north, north-east and east, which are appreciated from large windows facing north-east.

Figure 24: Extract of Figure 5.2 landscape masterplan as it relates to Mainwood Farm



Source: [APP-030]

3.10.98. In response to the concerns raised the applicant referred to the RVAA [REP2-115] which acknowledges that panels would be seen on rising ground beyond trees along the stream valley more than 350m to the north-east, and some panels may also be visible between trees looking towards the field just over 200m to the north. There would also be open and close views of the solar panels when leaving the property via the driveway during construction and early operation.

3.10.99. The RVAA concludes that large scale changes to views would arise for a limited area of the property (the driveway), and small-scale changes to a localised extent (the north-east facing windows). The RVAA judgement is that the magnitude would be large/ medium and the level of effect would be major/ moderate, adverse. Overall, the conclusion is that during all stages of the proposed development the magnitude of impact would be below the highest level of magnitude and effects would not reach the RVA threshold.

3.10.100. Various design changes were suggested by the occupants of Mainwood Farm in order to address its concerns regarding the extent of harm to

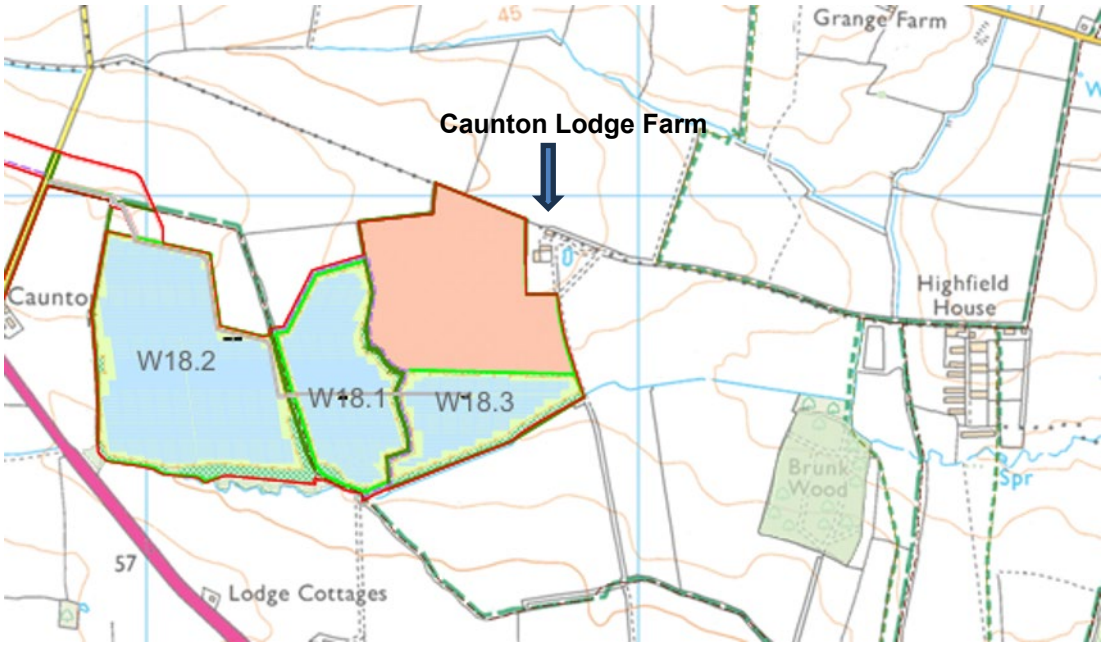
landscape and visual amenity. In response, the applicant referred to the provisions of EN-1 paragraph 5.10.26 which seeks to balance the mitigation of landscape and visual effects alongside operational effects including energy output [REP2-115].

3.10.101. Additional points relating to glint and glare are considered in section 3.16 of this recommendation report.

3.10.102. The residents of Caunton Lodge Farm (CLF) raised concerns regarding the southern and western outlooks from their property being dominated by the solar array on rising land [RR-181, AS-078, REP3-111, REP3-122]. They noted that this open rural landscape would be interrupted by what would appear as a dominant horizontal feature which would bisect the transition from a level field gently rising to the escarpment to the south. The residents of CLF also presented a critique of the applicant's RVAA.

3.10.103. The ExA visited this property as an ARSI and was able to view it in context [EV1-002]. This property is accessed via a long private track and has both an inner garden and an outer, more open garden to the south. The property's main outlook is to the south and south-west. The location of this property is shown in Figure 25.

Figure 25: Extract of Figure 5.2 landscape masterplan as it relates to Caunton Lodge Farm



Source: [APP-030]

3.10.104. The RVAA [APP-213] sets out that for CLF there would be open views towards the solar panels to the south and south-west, some 240m away, on ground which gently slopes towards the property. This would have the effect of making the proposed development appear slightly closer, particularly before the proposed hedge along the north side of the panel area matures. This therefore acknowledges that large/ medium scale changes to views would arise for a wide extent of this property during all stages prior to decommissioning. As such it sets out that the magnitude of change would be

large/ medium and the level of effect would be major, adverse. However, overall, the conclusion is that during all stages of the proposed development the magnitude of impact would be below the highest level of magnitude and effects would not reach the RVA threshold.

3.10.105. A 'landscape technical note including RVAA' was submitted by the occupants of CLF at deadline 5 [REP5-047 and REP5-050]. This sets out an independently conducted LVIA and RVAA which seeks to assess the visual effects of the proposed development on CLF (referred to as the CLF landscape assessment).

3.10.106. The CLF landscape assessment set out that, based on the open views across the agricultural landscape from this property, the proposed development would result in significant harm to residential visual amenity. More specifically, in terms of the RVAA, the effect would be of a 'medium high' magnitude of change for primary and secondary windows. The effects on the gardens, particularly the outer garden and southern access drive would be higher at 'high to medium high' magnitude of change.

3.10.107. In response, the applicant set out that the outer open garden and driveway are less important to residential amenity than the main living spaces and inner garden closer to the house. Therefore, this assessment broadly matches the large/ medium magnitude of effects for the property as a whole identified in the applicant's RVAA. As such, there was no challenge to the applicant's overall RVAA judgement that during all stages of development the magnitude of effects would be below the highest level of magnitude, and such effects would not reach the RVA threshold. The applicant went on to state that the important judgement in RVAA is that of the magnitude of effect as it is only effects of "the greatest magnitude of change" that have the potential to exceed the RVA threshold, as indicated by the guidance [REP6-064].

3.10.108. The CLF landscape assessment concluded that as there would be significant visual effects, further changes should be made to the proposals to avoid these effects. In response, the applicant referred again to the RVAA guidance noting that the important RVAA judgement is in relation to the magnitude of effects that have the potential to exceed the RVA threshold. It follows that further mitigation is unnecessary where the effects are not of the greatest magnitude [REP6-064].

3.10.109. The CLF landscape assessment makes specific reference to a recent planning approval for a home office, to be constructed in the southern outer garden area. It is suggested that views from this should be assessed as primary views, for which there would be a large/ medium magnitude of change. In response the applicant notes that the planning application was lodged in December 2025 when the nature of the proposed development would have been known. Also, whilst it was suggested that primary views from this home office would be affected, the applicant noted that views from working spaces are typically regarded as being of lower sensitivity, as the visual receptors would be expected to be focussed on their work rather than the view from the window [REP6-064].

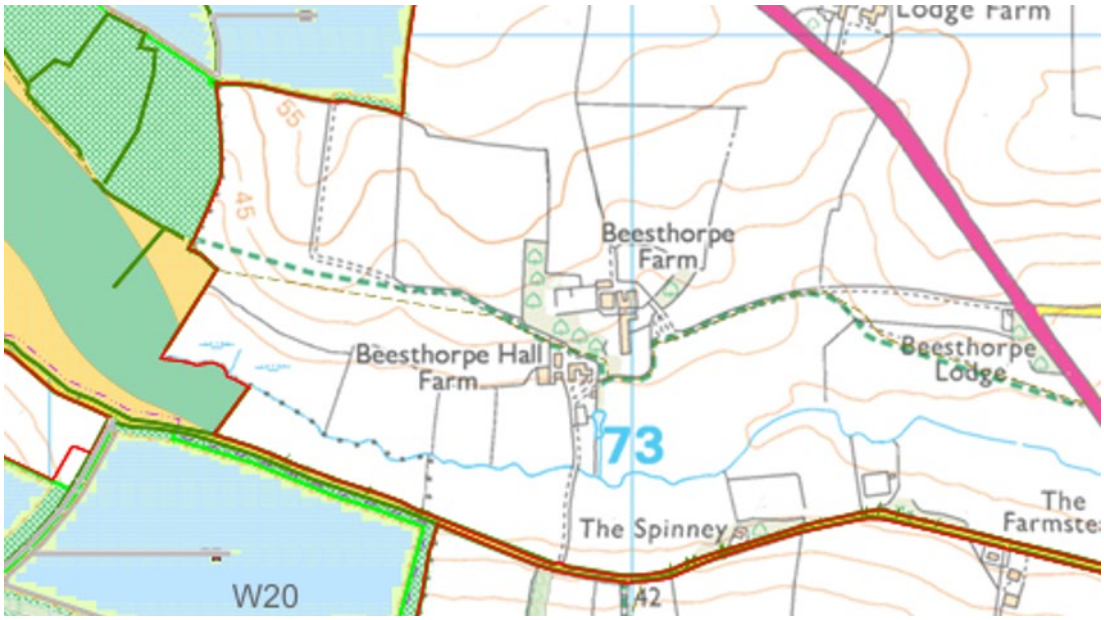
3.10.110. The CLF landscape assessment also suggested that the RVAA relied on baseline information that included the PEIR stage masterplan which identified an existing hedge along the southern boundary of the property. This was not in existence at that time. Whilst the applicant acknowledged that there may have been errors in the PEIR hedgerow data, it stated that this was not relied upon. Further, the application RVAA was informed by a site visit, though the RVAA was not updated as the site visit confirmed the initial assessment [REP6-064].

3.10.111. Finally, in response to concerns raised about the mitigation proposed along the southern access track and southern boundary of the property, the applicant clarified that no hedgerow planting along the garden boundary and driveway is proposed [REP6-064].

3.10.112. Other points raised in relation to heritage matters and the permissive footpath are addressed in this recommendation report at section 3.7 and section 3.12 of this recommendation report respectively.

3.10.113. The occupants of Beesthorpe Manor Farm raised concerns about the visibility and visual prominence of the proposed development in relation to their property, noting that it would be within 400m [RR-129, REP1-120]. They also referred to inadequate mitigation. The location of this property, in relation to the array areas is shown in Figure 26. This property is part of the building complex referred to as Beesthorpe Farm.

Figure 26: Extract of Figure 5.2 landscape masterplan as it relates to Beesthorpe Manor Farm



Source: [APP-030]

3.10.114. In response the applicant set out that the property lies beyond the 250m study area identified for the RVAA, and so would not exceed the RVA threshold [REP2-116]. More generally, mitigation around the areas of solar panels to the north-west of Beesthorpe Manor Farm would consist of allowing existing hedges to increase in height, along with gapping up where required.

This may not prevent all visibility of the solar arrays from the property, given the gently sloping ground within the nearest field, but would be sufficient mitigation given the distance of the array area from the property.

3.10.115. The occupant of the Shires raised concerns about how the existing boundary hedge to the west of the property was considered as part of the RVAA [REP3-124]. However, it is apparent from the applicant's response that the RVAA makes reference to the management of a proposed new hedge adjacent to the solar area, to the north-west of the property [REP4-059].

3.10.116. In addition to these specific points raised about the applicant's assessment of residential visual amenity, a more general concern was raised about the assessment only considering properties within 250m of the proposed development [RR-086]. The applicant's approach to determining this parameter for the study area is set out in Annex A of the RVAA, noting that this was increased from the 100m proposed at scoping [APP-213]. The 250m study area was regarded as acceptable by NSDC [REP6-042].

ExA's consideration

3.10.117. The ExA has considered the conclusions of the applicant's RVAA, particularly in terms of the methodology followed and in relation to properties for which specific concerns have been raised. Such consideration is given within the general parameters set out in the RVAA guidance that it is not uncommon for significant adverse effects on views and visual amenity to be experienced by people at their place of residence as a result of introducing a new development into the landscape. This itself does not necessarily cause particular planning concern. However, there are situations where the effect on the outlook/ visual amenity of a residential property is so great that it is not generally considered to be in the public interest to permit such conditions to occur where they did not exist before.

3.10.118. In relation to CLF the ExA notes that views to the south from the property and its curtilage would be considerably altered, with the array areas as an intrusive addition to middle distance views. However, this degree of visual intrusion would not represent such an overwhelming and oppressive visual impact that it would result in unsatisfactory living conditions. This is therefore not a situation in which the proposed development would unacceptably affect the use of land and buildings which ought to be protected in the public interest.

3.10.119. Overall, the ExA concludes that the RVAA judgements reached by the applicant are robust in terms of judging the visual effects of the proposed development on sensitive receptors. In this regard, in accordance with EN-1 paragraph 5.10.14, any harmful effects identified will need to be taken into consideration as part of the overall planning balance.

CONCLUSIONS

3.10.120. Whilst the areas that would be affected by the proposed development and their wider surroundings are not subject to any statutory landscape protection, they are much valued and appreciated by local communities. This

was well represented by the extent of the concerns about landscape and visual impacts expressed throughout the examination.

3.10.121. The ExA has considered the range of matters raised and has concluded overall that the applicant's LVIA is fit for purpose, has adopted a robust methodology and has given adequate consideration to landscape and visual effects, including cumulative effects. Appropriate consideration has been given to residential visual amenity. In these regards the LVIA meets the requirements for the assessment of landscape and visual effects set out in relevant policy and guidance.

3.10.122. It follows that the ExA agrees with the conclusions of the applicant's LVIA that the proposed development would result in significant adverse residual landscape and visual effects during construction and early operation, and also during operation and decommissioning for the host LCT. Here it is recognised that locally characteristic rural views of villages separated by gently undulating arable fields bordered by hedges would change to include close views of solar panels and other infrastructure, including intermediate substations.

3.10.123. Of the 11 main visual receptor groups identified, six of these would be subject to significant adverse residual landscape and visual effects during construction and early operation and during operation and decommissioning. For most of these groups the effects would reduce slightly in scale and/ or extent as a result of the maturation of mitigation planting, particularly for road users. Nonetheless, large scale changes to views from routes which pass through panel areas as a result of diversions, or the enclosure of currently open views by hedges, would continue to give rise to significant effects during operation. After decommissioning there would be no significant landscape effects, though for PRoW relating to visual receptor Group F (between Carlton-on-Trent, Ossington, Cromwell and Norwell) the diversion of and enclosure of footpaths would continue to give rise to significant adverse effects.

3.10.124. The ExA has had regard to NSDC's Allocations and Development Management DPD Policy DM4 which sets out that planning permission will be granted for low carbon energy generation development, where its benefits are not outweighed by detrimental impacts upon a range of elements including landscape character. Such considerations are important and relevant but must also be seen with in the context of EN-1 provisions which make it clear that all proposed energy infrastructure is likely to have landscape and visual effects.

3.10.125. In this case, notwithstanding the mitigation measures that would be employed, a notable range of residual significant effects would be experienced for many years to come. These are matters which must weigh against the proposed development. The ExA considers that this should be afforded great negative weight in the overall planning balance.

3.11. NOISE AND VIBRATION

INTRODUCTION

3.11.1. This section considers the noise and vibration effects of the proposed development.

3.11.2. The following must be given due regard in consideration of the noise and vibration effects of the proposed development:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.12 'Noise and Vibration'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.11.3. The applicant sets out its assessment of the noise and vibration effects of the proposed development in the Environmental Statement (ES) Chapter 12 Noise and Vibration Impact Assessment [APP-055] supported by the documents referenced therein. A revised version 2 is provided [REP6-023] which updates the planning status of other developments, which are already included in the assessment of cumulative effects.

Baseline

3.11.4. With regard to construction noise, the applicant considers that a study area of 300m from the Order limits is consistent with guidance which includes:

- Highways England (2020): Design Manual for Roads and Bridges - LA111 – Noise and vibration (DMRB)
- British Standards Institute BS 5228: (2009 with 2014 amendments)– Code of practice for noise and vibration control on construction and open sites (BS 5228)

3.11.5. With regard to construction vibration, the applicant considers that study areas of 100m from the Order limits and, for the effects of traffic, 50m from the kerb line of public roads, are consistent with DMRB.

3.11.6. With regard to operational noise the applicant defines a study area of 500m from the Order limits which is based on professional judgement, substantial experience on similar projects, and was agreed with NSDC through the consultation process.

3.11.7. The applicant scopes out operational traffic noise and operational vibration as it considers the effects would be negligible, as well as decommissioning noise and vibration, on the basis that any effects would be the same or less than construction and do not require a separate assessment.

3.11.8. The applicant provides a report of baseline noise monitoring carried out to establish the existing noise climate around the proposed development, at the locations agreed with NSDC. This is reported in the ES Baseline Noise Survey - Rev 1 [APP-270].

3.11.9. The applicant considers that the dominant noise source at the majority of the assessment locations is road traffic from the A1, the A616 and the A617 which all run close to the Order limits. The applicant reports that passing vehicles on the local road network as being noticeable at most monitoring locations. The applicant also notes that other noise sources are typical of rural areas, including rustling vegetation, agricultural activities, livestock and birdsong.

Methodology

3.11.10. The applicant identifies all noise sensitive receptors (NSR) within the largest study area, 500m from the Order limits, using Ordnance Survey AddressBase data, aerial imagery and site visits. The applicant filters the AddressBase dataset to identify all residential, leisure related, community related and educational uses.

3.11.11. With regard to construction, the applicant identifies NSRs with the potential to experience significant effects in terms of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) by calculating the distance at which significant impacts would occur from different activities.

3.11.12. For the assessment of operational impacts, following the identification of the NSRs within the study area, the applicant selected 61 representative assessment locations closest to areas where noise emitting equipment would be installed. The applicant states that these were agreed with NSDC and include:

- work no. 1 (solar photovoltaic modules)
- work no. 4 (intermediate substations)
- work no. 5a (battery energy storage system)
- work no. 5b (400 kV compound),
- work no. 6 (National Grid Staythorpe substation)
- work no. 7 (Staythorpe battery energy storage system connection)

3.11.13. With regard to operational noise effects, the applicant assesses these according to the methodology set out in British Standards Institute (2014 with 2019 amendments): BS 4142 – Methods for rating and assessing industrial and commercial sound (BS 4142), whereby the rating level of noise from the proposed development is compared to the representative background noise level.

3.11.14. The applicant derives the magnitude of operational noise effects using BS 4142 and the Association of Noise Consultants (2020) BS 4142:2014+A1:2019 Technical Note, that combine absolute rating levels and

rating level compared with background noise level. This is shown in its ES Chapter 12 [REP6-023] at Table 12.6.

3.11.15. The applicant describes how its construction noise assessment considers the impact of noise on NSRs from the:

- construction of hardstanding
- installation of PV modules and fencing
- installation of substations and battery energy storage system
- installation of cable routes

3.11.16. The applicant describes how noise levels at the NSRs caused by construction activities are dependent on factors that include the:

- sound power level of the plant or equipment used
- plant or equipment on time
- distance between the source and receiver
- attenuation due to ground absorption, air absorption and barrier effects

3.11.17. The applicant derives the magnitude of construction noise effects using BS 5228 and the DMRB, taking into account how long the noise would last for, and applies a precautionary ten-day duration as set out in the DMRB. This is shown in its ES Chapter 12 [REP6-023] at Table 12.5.

3.11.18. For construction traffic noise the applicant uses BS 5228 for roads that fall below the DMRB traffic volume threshold, and the DMRB for the remainder.

3.11.19. For operational and construction noise effects the applicant combines the sensitivity of the receptor and the magnitude of effect to derive significance which it summarises in Table 12.8 of Chapter 12 [REP6-023].

3.11.20. Overall, the applicant considers that its methodology, including the assumptions made as part of its assessment, result in an overprediction of noise levels and as such can be considered a reasonable worst-case assessment.

Mitigation

Operational noise

3.11.21. As part of the design process, the applicant sets indicative buffer distances to maximise the distance between substations and array inverters and NSRs to demonstrate good acoustic design principles, subject to other design constraints.

3.11.22. As part of the design of the proposed development, the applicant states that a 4m high acoustic fence is included around work no. 4 (intermediate substations), 5a (battery energy storage system) and 5b (400 kV compound).

3.11.23. The applicant considers that operational noise mitigation would be secured by schedule 2 requirements, of the draft Development Consent Order (dDCO) [REP6-004], which requires an operational assessment based on the

final equipment selection and location to be submitted to and approved by Newark and Sherwood District Council (NSDC) prior to the commencement of the proposed development.

Construction noise and vibration

3.11.24. The applicant states that construction site activities would be between 0730 to 1800 Mondays to Fridays, and 0830 to 1300 on Saturdays (unless in exceptional circumstances where need arises to protect plant, personnel or the environment).

3.11.25. With regard to construction noise and vibration, the applicant considers that mitigation is secured by schedule 2 requirements of the dDCO [REP6-004], which requires a construction environmental management plan (CEMP) for each phase of construction to be submitted to and approved by NSDC prior to construction. The CEMP would be based on the outline CEMP (oCEMP) [APP-204] which is included in schedule 11 documents and plans to be certified [REP6-004].

3.11.26. The applicant states that the oCEMP requires a construction noise management plan (CNMP) to be developed and submitted to NSDC for approval, prior to commencement of construction. The CNMP would identify mitigation measures or monitoring which may be required to ensure noise and vibration thresholds are not exceeded, based on the finalised location of construction activities.

Assessment of likely significant effects

3.11.27. The applicant predicts operational noise levels and finds significance would be negligible to low at any NSR during both daytime and night-time as described at paragraph 12.7.4 of ES Chapter 12 [REP6-023].

3.11.28. The applicant predicts construction and decommissioning noise and vibration levels and finds significance would be negligible to minor at any NSR during the daytime as described at paragraphs 12.7.1 to 12.7.3 of its ES Chapter 12 [REP6-023].

3.11.29. Based on its assessment, and accounting for proposed control measures, the applicant concludes that noise and vibration effects during the construction, operation and decommissioning of the proposed development, would not be significant in terms of the EIA Regulations.

Cumulative effects

3.11.30. The assessment of cumulative effects on noise and vibration has followed the methodology set out in ES Chapter 2 EIA [APP-045].

3.11.31. The applicant explains that cumulative construction noise and vibration impacts would only occur where noise and vibration from activities associated with the proposed development overlap temporally with noise and vibration activities associated with cumulative developments.

3.11.32. In practice, while overall construction periods may overlap, the applicant considers it would be unlikely that noise and vibration emitting activities associated with the proposed development and any cumulative development would take place at exactly the same time within the spatial scope of the same receptor.

3.11.33. However, a detailed cumulative noise and vibration assessment, based on exact construction activity timings for both the proposed development and any cumulative development would be included in the CNMP, as described at paragraph 3.11.26 of this report, which would include mitigation to avoid any significant cumulative effects.

3.11.34. With regard to operational effects the applicant concludes that, having taken account of the distances involved and noise levels predicted to be caused by the proposed development and the cumulative developments, there would be no significant cumulative effects at any NSRs.

ISSUES CONSIDERED DURING THE EXAMINATION

3.11.35. Issues were raised by interested parties (IP) as reported by the applicant in its Responses to Relevant Representations Report [REP2-115]. The concerns raised included that:

- noise mitigation and planting would be insufficient to minimise the noise impact
- construction noise would impact on wildlife, nearby communities and public rights of way (PRoW) users
- there would be an operational noise impact from equipment including the substation
- noise and vibration would badly affect particular properties which are close to minor roads that would be used as a construction traffic route, for example Egmanton Parish Meeting [RR-047].

3.11.36. The applicant responded with reference to its ES Chapter 12 Noise and Vibration Impact Assessment - Rev 1 [APP-055], the documents referenced therein, and its oCEMP [APP-204].

3.11.37. Carlton-on-Trent Parish Council [REP3-104] noted that transformers would emit a continuous low-frequency hum when energised. It explained that whilst designed to comply with environmental noise standards, such sound would be more perceptible in rural areas where baseline noise levels are low, particularly during evening and night-time conditions.

3.11.38. The applicant's response [REP4-059] referred to its Responses to Relevant Representations Report [REP2-115].

3.11.39. In its LIR [REP1-075] NSDC whilst concluding that noise and vibration impacts would be neutral, noted that:

- the CEMP would include measures to control noise and vibration during construction activities that would include scheduling noisy activities during

less sensitive times of the day, using quieter equipment and machinery, implementing noise barriers and enclosures around noisy equipment
- the Construction Traffic Management Plan (CTMP) would aim to minimise noise from construction traffic by designating specific routes for construction vehicles, limiting the speed of vehicles, scheduling deliveries to avoid peak traffic times
- only outline management plans have been produced, pending final development details and that a CNMP would be developed based upon finalised location and equipment details and submitted prior to commencement of works
- the development has been planned as far as possible to maximise distances from receptors to substation and battery energy storage system areas and acoustic fencing was proposed
- an operational noise assessment based upon finalised details would be submitted prior to commencement of each phase of development

3.11.40. In the final signed statement of common ground with NSDC [REP6-042] all noise and vibration matters were shown as agreed.

3.11.41. In its first written questions (ExQ)1 Q2.1.23 [PD-008], the Examining Authority (ExA) asked the applicant to review its proposed operational noise requirement against that included in the made Order for The Helios Renewable Energy Project.

3.11.42. At EXQ2 Q2.2.14 [PD-011] the ExA asked the applicant to review its revised operational noise requirement as it would allow the proposed development to cause adverse, and potentially significantly adverse, noise impacts. It therefore would not meet the EN-1 policy aims with regard to operational noise.

3.11.43. The applicant recognised the policy inconsistency and amended its requirement to address the issue. This was reflected in its final dDCO [REP6-004].

3.11.44. The ExA asked about construction noise effects during issue specific hearing 3 [EV7-002, EV7-004, EV7-006, EV7-008] as reported by the applicant [REP3-101]. The applicant acknowledged that whilst some harms would remain it considered the proposed development would be consistent with the policies set out in EN-1.

ExA's consideration

3.11.45. The ExA finds the applicant's responses to relevant representations satisfactory as concerns raised were not supported by evidence that caused the ExA to doubt the applicant's approach to the assessment or its conclusions.

3.11.46. The ExA considers that the applicant could have done more to explain how the use of the rating level would address the concerns of Carlton-on-Trent Parish Council regarding low-frequency hum [REP3-104].

3.11.47. The ExA sees no reason to disagree with the applicant's assessment that significant noise and vibration effects during operation, construction or decommissioning would be unlikely when considered in terms of the EIA regulations.

3.11.48. With regard to EN-1 paragraph 5.12.17, the ExA considers that significant adverse impacts on health and quality of life from noise would be avoided during all phases of the proposed development, taking into account the applicant's proposed mitigation measures as would be secured in the recommended (r)DCO at Appendix A.

3.11.49. During the operation of the proposed development the ExA considers that the noise limit set out as requirement 15(4) of the rDCO at Appendix A would avoid operational noise causing other, that is to say less than significant, adverse effects on health and quality of life.

3.11.50. The ExA has had regard to EN-1 paragraph 5.12.17 and has noted mitigation and minimisation would be achieved through implementation of a CEMP, based on the oCEMP [APP-204]. However, the ExA's position is that other, that is to say less than significant, adverse impacts on health and quality of life from noise, might be experienced by occupants of those dwellings identified by the applicant as likely to be exposed above its medium effect threshold during construction.

CONCLUSION

3.11.51. In conclusion, accounting for the measures set out in its rDCO, the ExA assigns a little negative weight to the issue against the making of the Order.

3.12. RECREATION

INTRODUCTION

3.12.1. This section considers the effects of the proposed development on recreation, including Public Rights of Way (PRoW).

3.12.2. The following must be given due regard in consideration of the effects of the proposed development on recreation:

- the Overarching national policy statements (NPS) for Energy (EN-1), primarily section 5.11 entitled 'Land Use, including Open Space, Green Infrastructure, and Green Belt'
- the NPS for Renewable Energy Infrastructure (EN-3), paragraphs 2.10.40 to 2.10.45 within section 2.10 entitled 'Solar Photovoltaic Generation'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.12.3. The applicant sets out its assessment of the effects of the proposed development on recreation in the Environmental Statement (ES) Chapter 18 Recreation Assessment [APP-061]. A revised version 4 is provided [REP5-013] which updates the applicant's proposals regarding PRoW and permissive paths.

3.12.4. Supporting documents include the Public Rights of Way Strategy [APP-200] the outline Decommissioning and Restoration Plan (oDRP) [APP-207] and the outline Recreational Routes Management Plan (oRRMP) [APP-295].

Baseline

3.12.5. For assessing recreation receptors, the applicant defines the study area as land within the Order limits and land within 250m of the Order limits, with the categorisation of the impacts on recreation receptors, described in section 18.4.3 [REP5-013].

3.12.6. Within this study area the applicant identifies PRoW made up of:

- 95 public footpaths
- 18 public bridleways
- 3 byways open to the public
- 1 restricted byway
- 1 long distance footpath

3.12.7. In addition the applicant identifies 29 local wildlife sites, five of these accessible via PRoW, and two sites of special scientific interest, with one accessible to the public.

Methodology

3.12.8. The applicant sets out that recreational amenity incorporates an array of experiential factors, including visual pleasure, a sense of space, exercise, fresh air, light, company or solitude, tranquillity, appreciating nature and other factors, which may include subjective factors.

3.12.9. The potential effects of the proposed development on recreation are categorised by the applicant as:

- direct effects: for example, construction activities physically affecting PRoW
- indirect effects: such as the effects of noise and changes in view for recreational receptor users.

3.12.10. This evaluation seeks to draw on the conclusions set out in relation to other topics, including visual effects, glint and glare effects, noise effects, and traffic effects, including effects on pedestrians (on roads), road cyclists and national/regional cycle routes are assessed

3.12.11. The applicant states that consideration is also given to the additional "in combination" effects of these factors on recreational receptors.

3.12.12. The applicant shows recreation receptors grouped by parish and the assessment of all recreation receptors, including its proposed additional permissive footpaths and bridleways.

3.12.13. In its assessment of significance, the applicant considers the sensitivity of the receptor and the magnitude of effect. The applicant determines sensitivity by considering the importance of the receptor and the magnitude of effect by using professional judgement.

Mitigation

3.12.14. The applicant states that the proposed development is designed with embedded mitigation and enhancement measures to ensure that significant effects on recreational receptors are avoided where possible throughout its construction, operation and decommissioning of the proposed development.

3.12.15. The applicant describes embedded mitigation and enhancement measures that would include 22 permissive footpaths and six permissive bridleways within the Order limits. The proposed permissive footpaths and bridleways would add in total 34.8km of new route. The applicant explains that they have been identified on the basis that they would:

- provide improved access by way of connecting disjointed areas of the network of PRoW
- reduce the need to walk along roads without pavements
- reduce the need to walk through areas where there may be conflict between recreation and livestock management
- provide improved options for circular walks

3.12.16. On this basis the applicant suggests that, alongside the existing network, the routes would create a 50.6km circular route, made up of 38.1km of existing routes, both PRoW and roads, and an additional 12.5km of new permissive routes (with reference to the circular route Chapter 18 [REP5-013] Table 18.7).

3.12.17. Other mitigation measures include information boards along the PRoW network and permissive routes. These would identify information of local landscape, biodiversity and heritage interest. In addition, some would describe aspects of the solar farm itself, primarily in areas where the development would be more openly visible. The applicant considers that wayfinding and access would be improved and proposes the creation of a community orchard.

3.12.18. The applicant considers that the mitigation of adverse effects on recreational routes, including PRoW diversions, is secured by schedule 2 requirement 18, of the draft Development Consent Order (dDCO) [REP6-004], which requires a Recreational Routes Management Plan (RRMP) to be submitted to and approved by the county authority prior to each phase of the proposed development. The RRMP would be based on the oRRMP [REP5-028] which is included in schedule 11 documents and plans to be certified [REP6-004].

3.12.19. With regard to decommissioning and restoration, the applicant states that schedule 2 requirement 19 of the dDCO [REP6-004] requires a Decommissioning and Restoration Plan (DRP) to be submitted to and approved by the planning authority, in consultation with the county authority, National Highways and the Environment Agency. The DRP would be based on the outline DRP [REP4-021] which is included in schedule 11 documents and plans to be certified.

Assessment of likely significant effects

3.12.20. The applicant describes the seven permanent PRoW diversions that would be required as part of the proposed development and one bridleway diversion that would be required only during the construction and decommissioning phases.

3.12.21. During the construction and decommissioning phases of the proposed development the applicant concludes that adverse effects on PRoW would range from minor to major, although it considers none would be significant in Environmental Impact Assessment (EIA) terms.

3.12.22. During the operational phase of the proposed development the applicant concludes that adverse effects on PRoW would range from minor to moderate, although it considers none would be significant in EIA terms.

3.12.23. During the operational phase of the proposed development the applicant concludes that the beneficial effects of the new permissive routes and circular recreational route would be moderate and major respectively, and that the latter would be significant in EIA terms.

Cumulative effects

3.12.24. The applicant considers cumulative effects would be possible where developments are proposed that are within 250m of a recreation receptor for which residual recreational effects are identified. These are grouped geographically and cumulative effects are considered by comparing the addition of the proposed development to the cumulative baseline. The applicant considers that cumulative effects identified would be no more than minor adverse and would not be significant in EIA terms.

ISSUES CONSIDERED DURING THE EXAMINATION

3.12.25. Issues were raised by interested parties (IP) as reported by the applicant in its Responses to Relevant Representations Report [REP2-115]. The concerns raised included that:

- there would be an adverse impact on the rural lifestyle that the residents enjoy and loss of amenity
- information boards around the solar park would be an unnecessary blight on the countryside
- existing footpaths would be re-routed in large part and be screened from the solar farm facilities by fences, hedges and tree planting and that the open views enjoyed by walkers, cyclists and horse riders would be lost for a very long period of time
- there would be no comparison between walking or riding through open countryside and walking through inescapable corridors formed by industrial scale solar infrastructure
- the deletion of part of a PRoW which is an historic route would be unacceptable
- the use by the Readyfield bloodhounds and the Grove and Rufford hunt, pursuits that are part of our heritage, would be restricted and would put more pressure on remaining land
- rights of way should be retained unless there is a very good reason for them to be diverted or the diversion proposed is more pleasant and convenient for walkers
- the applicant must guarantee that any diverted paths would be restored to their original alignment when the proposed development would be decommissioned
- the proposed development would include a new public right of way close to private and secluded property which would cause intrusion and a real loss of privacy, allowing members of the public direct views into the property

3.12.26. Nottinghamshire Area Ramblers in its relevant representation [RR-165] provided its assessment of particular PRoW diversions and suggested, in some cases, alternative and, in their opinion, better diversionary routes.

3.12.27. The applicant responded with reference to its Chapter 18 Recreation Assessment - Rev 1 [APP-061], the Public Rights of Way and Permissive Routes Plan [APP-020], the Public Rights of Way Strategy - Rev 1 [APP-

200], the oDRP Rev 1 [APP-207], the oRRMP - Rev 1 [APP-295], and Chapter 18 Recreation Figures - Rev 2 [AS-048].

3.12.28. In its LIR [REP1-078] NCC set out their view that, overall, the PRoW network had been considered and managed well by the applicant, with the majority of paths not physically affected by the proposed development.

3.12.29. With regard to the diversions and closures NCC commented on the oRRMP [APP-295] as follows:

- signage, detailed plans and dates should be finalised in consultation with NCC as the highways authority to ensure awareness and management with other closures in the area
- would the dDCO give the ability to arrange temporary closures with the alternative route that is not on a highway, as this would not normally be the case unless the landowner agrees to take on the responsibility for the safety of the public when on a route that is not on a highway
- once a path had been diverted under a legal order (not a temporary order) would the dDCO allow it to be moved back on decommissioning
- whilst interpretation boards and picnic areas would be recognised as an enhancement, the location of these would be paramount, as would be the clarification of maintenance and decommissioning

3.12.30. NCC concluded that the applicant had managed the impact on PRoW to an acceptable standard and subject to clarification of the issues it had raised, it suggested that the impact on the network would be neutral.

3.12.31. The applicant responded to the NCC LIR in its Responses to Deadline 1 Submissions Report [REP2-116] and updated its submissions as relevant in response to comments and points of clarification.

3.12.32. With regard to temporary closure and temporary alternative routing, the applicant stated that the dDCO would provide for the applicant to temporarily close and/ or divert any PRoW for the purposes of any phase of the authorised development. The applicant explained that where a temporary alternative route was proposed that does not lie within the existing adopted highway, this would be implemented only where the necessary land rights had been secured through agreement with the landowner. In such cases, responsibility for maintenance and public liability would rest with the applicant rather than the highway authority.

3.12.33. With regard to diversions implemented during the operational phase of the development the applicant stated that these would remain permanently diverted and would constitute the legal PRoW, unless and until a mechanism outside the made DCO is used by NCC to re-divert them to their original alignment following decommissioning. Prior to the issue of the final DRP, the applicant would carry out a review of the PRoW within the Order limits, in consultation with NCC. Should it be deemed that any PRoWs would better be re-located, whether back to their pre proposed development locations or otherwise, the applicant would apply for these changes to be made through the required process at that time.

3.12.34. In its first written questions (ExQ)1 Q6.1.1 [PD-008], the ExA asked the applicant to commit to compliance with accessibility standards including, widths, gradients, surfaces, and compliance with British Standard BS 5709 with respect to gaps, gates and stiles.

3.12.35. The applicant responded by updating its oRRMP [REP2-082].

3.12.36. In the final signed statement of common ground with NCC [REP6-040] all PRoW matters were shown as agreed. In this the applicant made reference to the final versions of its Chapter 18 Recreation Assessment - Rev 4 [REP5-013], Public Rights of Way and Permissive Routes Plan Rev 4 [REP5-004], Public Rights of Way Strategy - Rev 3 [REP3-030], oDRP Rev 4 [REP4-021], oRRMP - Rev 4 [REP5-028], and Chapter 18 Recreation Figures - Rev 4 [REP5-018].

3.12.37. Nottinghamshire Area Ramblers made several submissions [REP1-103], [REP2-132] and [REP3-115] in which it presented detailed critiques of the applicant's proposals, largely relating to concerns about loss of historic routes. These were summarised in its submission [REP5-049] which noted that the three cross-field PRoW that would be diverted around the field edges have been in existence for over a hundred years and their historic alignments arise from when they were the routes that linked rural communities. Nottinghamshire Area Ramblers re-iterated its position that these footpaths should be restored to their rightful position in the landscape, so that future generations would be able to enjoy these footpaths as they are enjoyed today.

3.12.38. In its closing statement [REP6-064] the applicant in response said that it did not agree that the significance of the historical alignments, in itself, would necessitate their reinstatement, particularly where doing so could adversely affect the efficient use of agricultural land.

3.12.39. With regard to any loss of privacy caused by the creation of the new permissive bridleway, the applicant explained [REP2-115] that this would be 300m west of the edge of the garden at the property in question and any views of the property from the route would be appropriately screened by new and retained hedgerows and tree planting in line with the outline Landscape and Ecological Management Plan [APP-031].

ExA's consideration

3.12.40. The ExA finds the applicant's responses to written submissions satisfactory as they clarified certain matters, addressed the particular concern over privacy, addressed the concerns of NCC, updated outline plans and increased the number of proposed permissive paths.

3.12.41. The ExA finds no reason to disagree that the mitigation of adverse effects on the identified recreational receptors, principally the PRoWs, would be adequately secured in the recommended (r) DCO, specifically though requirement 18 relating to the oRRMP.

3.12.42. The ExA finds that the applicant's assessment that the permissive circular recreational route would have a significant beneficial effect on recreation is not supported by any independent assessment. Despite the absence of such evidence, the ExA considers that the provision of permissive paths to the extent proposed does weigh in favour of the proposed development.

3.12.43. With regard to the applicant's refusal to be bound to restore the historic alignment of PRoWs because this would run contrary to efficient farming, the ExA regards this as not relevant to the subject of recreation. Hence the ExA considers that the applicant's position weighs against the proposed development.

3.12.44. The ExA finds the application to be consistent with the requirements of EN-1 section 5.11 and EN-3 paragraphs 2.10.40 to 2.10.45.

CONCLUSIONS

3.12.45. In conclusion, accounting for the measures set out in its rDCO, the ExA assigns neutral weight to the issue with regard to the making of the Order.

3.13. SOCIO-ECONOMICS

INTRODUCTION

3.13.1. This section considers the socio-economic effects of the proposed development. Whilst this includes the effect on the use of public rights of way (PRoW) by tourists, the detailed effects on PRoW are described in the recreation section of this recommendation report at section 3.12.

3.13.2. The Examining Authority (ExA) must give due regard to the following in consideration of the socio-economic effects of the proposed development:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), particularly section 5.13 'Socio-economic Impacts'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.13.3. The applicant sets out its assessment of the socio-economic effects of the proposed development in its Environmental Statement (ES) Chapter 13 Socio-economics and Tourism [APP-056], supported by the documents referenced therein.

Baseline

3.13.4. The applicant considers that the Newark and Sherwood local authority area and the town of Mansfield are the appropriate study area for socio-economic effects. The applicant accounts for the town's higher population density, and its greater proportion of working-age population available for work opportunities, as evidenced by its commuting inflow numbers.

3.13.5. The applicant describes that information on socio-economics and tourism within the study area was collected through a detailed review of existing studies and datasets. These datasets cover:

- population and deprivation
- economy
- employment and skills
- tourism

3.13.6. The applicant characterises the socio-economic baseline for the study area in terms of:

- population and demographics
- employment
- gross value added (GVA) per employee
- education
- travel and commuting

- access to renewable electricity
- deprivation
- tourism
- PRoW landscape

3.13.7. The applicant goes on to compare baseline data for these elements within the study area with regional data. The applicant also goes on to present a forecast baseline using forecasts provided by the Office for National Statistics.

Methodology

3.13.8. The applicant states that there is no specific guidance available which establishes a methodology for undertaking an Environmental Impact Assessment (EIA) of the socio-economic effects of a development. Accordingly, the applicant considers that its approach is based on professional experience and best practice to respond to the requirements of EN-1.

3.13.9. For the construction and decommissioning phases of the proposed development the applicant identifies the scope of the assessment to include the effect of, or on:

- numbers of short term direct and indirect jobs available
- spending in the local economy
- temporary road diversions and disruption
- tourism receptors
- the cessation of agricultural activities
- accommodation providers

3.13.10. For the operation and maintenance phase of the proposed development the applicant identifies the scope of the assessment to include the effect of, or on:

- numbers of long term direct and indirect jobs available
- provision of education and information points
- spending in the local economy
- displacement of agricultural land uses
- altered PRoW and new permissive routes
- visual amenity at some tourist destinations

3.13.11. The applicant explains that the significance of effects upon socio-economic receptors has been determined by taking into account the sensitivity of the receptor, which may include its importance in policy terms, and the magnitude of the impact which includes the degree of change and how long it lasts. The applicant explains that this is all guided by professional judgement.

3.13.12. The socio-economic receptors that the applicant takes forward for assessment are the following:

- unemployment levels, occupations, industry, and earnings, labour supply

- economic activity and GVA
- level of qualifications/ number of highly skilled workers
- agricultural land value and agricultural output
- tourist uses, spending in local economy and, specific tourist attractions
- availability of short-term rentals, construction employment, housing composition, housing tenures
- motor car availability, travel to work method and time

Mitigation

3.13.13. The applicant considers that the design of the proposed development would mitigate effects on tourism, including through the screening of visual effects and the provision of new permissive paths.

3.13.14. In terms of socio-economic benefits, the applicant states that these would be achieved through the implementation of a skills, supply chain and employment plan (SSCEP) that is based on the outline Skills, Supply Chain and Employment Plan (oSSCEP) [APP-274].

3.13.15. The applicant sets out that the approval and implementation of a SSCEP for the respective phases of the proposed development would be secured by its inclusion in schedule 11 documents and plans to be certified, and in schedule 2 requirements, requirement 17 of the draft Development Consent Order (dDCO) [REP6-004].

Assessment of likely significant effects

Unemployment levels, occupations, industry, and earnings, labour supply, and economic activity and GVA

3.13.16. The ES Chapter 13 [APP-056] sets out that during construction, the gains in GVA associated with the proposed development, which it estimates to be:

- employment generation (£10.4m)
- manufacturing employment (£3.47m)
- indirect labour (£61.12m)

3.13.17. This would far outweigh the loss of GVA output associated with:

- cessation of agricultural labour (£4.37m)
- loss of agricultural production (£4m)

3.13.18. On this basis the applicant calculates the GVA net gain as approximately £66.6m, corresponding to a net direct local full time equivalent (FTE) employment change of 163 over the two-year construction phase, as summarised in table 13.18.

3.13.19. Accounting for the sensitivity of this socio-economic receptor and the magnitude of the impact, the applicant concludes that there would be a likely significant beneficial effect during the construction of the proposed development.

3.13.20. With regard to the operation and maintenance phase, the applicant concludes that there would be a net direct local FTE employment gain of 20 and a GVA net gain of approximately £554.83m over the forty years of operation, as summarised in table 13.19, of which the value of electricity generated contributes £526.70m.

3.13.21. Accounting for the sensitivity of this socio-economic receptor and the magnitude of the impact, the applicant concludes that there would be a likely significant beneficial effect during the operation and maintenance of the proposed development.

3.13.22. With regard to effects during decommissioning, the applicant concludes that these would in qualitative terms be similar to construction but applies a discount factor in the analysis. The applicant still concludes that there would be a likely significant beneficial effect during the decommissioning of the proposed development.

Level of qualifications/ number of highly skilled workers

3.13.23. Taking into account the implementation of the oSSCEP [APP-274] the applicant concludes that during the construction, and operation and maintenance of the proposed development there would be a likely significant beneficial effect.

Other socio-economic receptors

3.13.24. For the remaining socio-economic receptors listed at paragraph 3.13.12 the applicant concludes effects across all phases of the proposed development would be negligible, except for some minor adverse effects on agricultural output and tourist spending in the local economy during the operation and maintenance phase.

Cumulative effects

3.13.25. The applicant explains that its assessment of cumulative effects on socioeconomics and tourism has followed the methodology set out in ES Chapter 2 EIA [APP-045].

3.13.26. The applicant sets out that effects scoped into the cumulative assessment are limited to the effects on temporary worker accommodation arising from the proposed development against a baseline that includes other developments requiring specialist construction employment.

3.13.27. The applicant concludes that no significant cumulative effects would be likely to occur with respect to socio-economics and tourism.

ISSUES CONSIDERED DURING THE EXAMINATION

3.13.28. Issues were raised by interested parties (IP) as reported by the applicant in its Responses to Relevant Representations Report [REP2-115]. The concerns raised included:

- the extent to which the local communities would benefit from the proposed development and the compensation for residents
- inconsistent estimation of the number of FTE jobs
- impacts on the natural environment and the operation of commercial enterprises in proximity to the proposed development would significantly affect the tourist economy
- the impact on the rural lifestyle that residents enjoy and the loss of amenity

3.13.29. Carlton-on-Trent Parish Council in its relevant representation [RR-025] raised the concern that a number of residents within the parish work on the land and would lose hours or lose their jobs.

3.13.30. The applicant responded with reference to ES Chapter 13 Socio-economics and Tourism [APP-056] and the documents referenced therein, and its ES Chapter 18 Recreation [APP-061]. The applicant also noted that the provision of compensation is not a material consideration within an EIA assessment.

3.13.31. In its LIR [REP1-075] NSDC concluded that the socio-economic impact would be positive and commented that:

- it considered the creation of jobs during the construction phase to only be a moderate benefit, given the temporary nature of the construction programme
- it recommended that the applicant consider how they could work with other applicants for other projects in the Nottinghamshire and Lincolnshire region to deliver such benefits
- the applicant's oSSCEP [APP-274] should be further developed during the examination so that potential jobs could be secured as direct and tangible employment on either a temporary or permanent basis

3.13.32. The applicant's response included a revised oSSCEP [REP3-058] which showed a greater emphasis on local recruitment.

3.13.33. In the final signed statement of common ground with NSDC [REP6-042] all socio-economic matters were shown as agreed.

ExA's consideration

3.13.34. The ExA finds the applicant's responses to representations satisfactory as concerns raised were not supported by evidence that caused the ExA to doubt the applicant's approach to the assessment, or its conclusions.

3.13.35. The ExA sees no reason to disagree with the applicant's assessment of there being a significant beneficial effect during the construction of the proposed development on jobs and the local economy. However, the ExA considers that this would be counter balanced, at least to some extent, by minor adverse effects on agricultural output and tourism spending in the local economy during the operation of the proposed development, which the applicant does not consider significant in EIA terms. The ExA considers however that net socio-economic effects during construction weigh in favour of the proposed development.

3.13.36. The ExA finds there is consistency with EN-1 section 5.13 but has concerns over the amount of weight that may be given to the applicant's claim of significant operational benefits, as EN-1 paragraph 5.13.10 states that limited weight may be given to such assertions given the urgent need for such infrastructure.

3.13.37. According to the applicant the value of electricity generated amounts to around 95% of the socio-economic benefit during operation, as described at paragraph 3.13.20 above. Whilst the applicant provides analysis to support this figure, when considered against EN-1 paragraph 5.13.10 the ExA considers that this may only be given neutral weight as this benefit is already accounted for in the substantial weight given to need in section 3.2 of this recommendation report.

CONCLUSIONS

3.13.38. In conclusion, accounting for the measures set out in its recommended DCO, the ExA assigns a little weight in favour of the making of the Order.

3.14. TRAFFIC AND TRANSPORT

INTRODUCTION

3.14.1. This section considers the effects of the proposed development on traffic and transport. The effects on Public Rights of Way (PRoW) are considered in the recreation section of this recommendation report at 3.12. The effects of glint and glare on the users of transport networks, are considered in the miscellaneous section of this recommendation report at 3.16.

3.14.2. The following must be given due regard in consideration of the traffic and transport effects of the proposed development:

- the Overarching National Policy Statement (NPS) for Energy (EN-1) section 5.14 'Traffic and Transport'
- the NPS for Renewable Energy Infrastructure (EN-3) paragraphs 2.10.139 to 2.10.144, 2.10.161 and 2.10.162
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.14.3. The applicant sets out its assessment of the traffic and transport effects of the proposed development in the Environmental Statement (ES) Chapter 14 Traffic and Transport [APP-057], supported by the documents referenced therein, with the final version being Chapter 14 Traffic and Transport Revision 3 [REP4-011].

Baseline

3.14.4. The applicant provides a transport statement (TS) which includes a report [APP-275] which covers matters such as site baseline and accessibility audit, trip generation and distribution and impact assessment. This report is supported by figures, tables and drawings that show:

- personal injury locations [APP-276]
- traffic survey locations, proposed site access and passing place locations [APP-277]
- construction traffic and abnormal load routes, collision data and traffic count data [APP-278]
- traffic count data [APP-279] and [APP-280]
- site access design drawings [APP-281]
- passing place design drawings [APP-282]
- abnormal load reports [APP-283]

3.14.5. The applicant presents a review of personal injury collision (PIC) data for all construction phase traffic routes within the study area. The applicant states that the review of the collision records would identify patterns of collision types that may be attributed to issues arising from the existing road design or

layout, and identify any trends that could be exacerbated by proposed development related traffic.

3.14.6. The applicant sources the data from Nottinghamshire County Council (NCC) for the most recent full 3-year period, 01 January 2022 to 31 December 2024, which allows consideration of comparable post-COVID19 data. PICs are classified as 'slight', 'serious' and 'fatal' depending on the severity of the injuries sustained. This is presented as table 14.11 of Chapter 14 Traffic and Transport [REP4-011].

3.14.7. The applicant presents a baseline of existing traffic levels within the study area to inform the assessments and describes traffic surveys carried out between April 2024 and March 2025 to reflect neutral periods representative of the typical flow conditions on the network, avoiding for example, school holiday periods. The applicant describes the collection of data at locations along the key routes to be used by construction traffic and in the vicinity of site access locations.

3.14.8. Through a combination of site visits and desktop studies, the applicant determines a sensitivity rating for each link within the study area. This is shown alongside baseline traffic flows in table 14.6 [REP4-011].

3.14.9. The applicant notes that National Highways (NH) proposes to widen the A46 Newark Bypass near Newark-on Trent. Whilst this aims to increase capacity, reduce delays and incidents, and improve journey times the applicant does not consider that this would impact the baseline conditions.

3.14.10. With regard to any forecast change in baseline the applicant applies local growth factors to the base flows using factors derived from TEMPro, the Trip End Model Presentation Program used to access and analyse data from the National Trip End Model, assuming 2028 would be the mid-point of the construction period.

Methodology

3.14.11. The methodology used follows the "Guidelines for the Environmental Assessment of Traffic and Movement" published by the Institute of Environmental Management and Assessment (IEMA) in July 2023. This sets out the methodology for assessing the traffic related environmental effects of a development caused by changes in traffic flows.

3.14.12. The applicant identifies the study area to cover the extent of the surrounding road network to be used by construction related vehicles travelling to and from the proposed development. This is the area where the applicant considers significant transport and access effects could occur.

3.14.13. The applicant provides a map of the study area [APP-172] along with names of key roads. Given the proximity of the Order limits to the A1 trunk road that passes to the immediate east, as a worst case the applicant assumes that all vehicles would route to the proposed development via the A1, in accordance with the permitted routes outlined in the outline Construction Transport Management Plan (oCTMP) [REP6-031]. The various roads are given a

highway link identification number by the applicant to be used in the assessment process.

3.14.14. The applicant includes the A1 within the study area but does not assess the impact upon it because it is part of the strategic road network (SRN) and the applicant considers that it has an inherent capability to accommodate a high volume of traffic.

3.14.15. Whilst the applicant considers that some traffic may arrive from the west, along the A617, before following the permitted routes, given the location of the proposed development in the context of the wider road network, it considers that such movements would represent a small percentage of the traffic volumes on this road and would not be significant.

3.14.16. Using the IEMA guidance the applicant identifies the potential impacts as:

- severance
- driver stress and delay
- pedestrian and cyclist (and equestrian) delay
- non-motorised user amenity
- fear and intimidation
- highway safety
- hazardous and large loads

3.14.17. Setting aside the A1, the applicant describes a screening process to determine the scale and scope of the assessment for severance, pedestrian and cyclist amenity and delay, fear and intimidation and highway safety. It says that two rules apply to screen a road link for further assessment:

- highway links where traffic flows are predicted to increase by more than 30% (or where the number of heavy goods vehicles (HGV) is predicted to increase by more than 30%)
- any other specifically sensitive areas where traffic flows are predicted to increase by 10% or more

3.14.18. For each of the potential impacts described at paragraph 3.14.16 the applicant goes on to describe how these are defined by the IEMA guidance and how the impacts are to be assessed, for example whether through quantified change, professional judgement or both.

3.14.19. By combining highway link sensitivity rating and magnitude of change the applicant sets out significance criteria at table 14.8 of Chapter 14 Traffic and Transport [REP4-011].

Mitigation

3.14.20. Access to the proposed development is determined using a hierarchy of routes to the access locations to be used during the construction phase. The applicant explains that these routes would be secured through the oCTMP [REP6-031] as a certified document referenced by the draft Development Consent Order (dDCO) [REP6-004]. A construction traffic management plan

(CTMP) would be submitted for approval by NCC, in consultation with NH, based on the oCTMP, as required by requirement 12 of the dDCO.

3.14.21. The applicant's overarching construction access route strategy for the proposed development uses a preference hierarchy of:

- trunk roads - those roads that form part of the SRN and are managed by NH
- 'A' roads - as classified and managed by the local highways authority (LHA)
- 'B' roads - as classified and managed by the LHA
- 'C' roads - as classified and managed by the LHA and unclassified roads

3.14.22. To determine the most appropriate construction route based on construction traffic routing from the A1 trunk road, the applicant applies the hierarchy set out at paragraph 3.14.21, supported by the following:

- using the shortest route
- seeking to avoid sensitive areas as far as possible, such as schools and villages
- using roads of appropriate width and alignment
- using internal haul roads where suitable and convenient

3.14.23. The applicant goes on to describe primary, secondary and cable drum access points for the proposed development, which totals 43, of which 25 are existing accesses. The applicant classifies the access points as follows:

- primary access points would be the main access from the public highway. They would typically serve as a site compound area, be designed to accommodate the turning movements of all sizes of vehicle, and would operate under free-flow conditions
- secondary access points would function to supplement the primary access and would typically facilitate cross-over movements of the public highway between works areas on either side. These would operate under the supervision of a banksman during the construction phase. They are designed to accommodate the turning movements of vehicles excluding HGVs
- cable drum access points would function as a primary access, with an over-run provision to accommodate the turning movement of the abnormal indivisible load (AIL) vehicle transporting the cable drum which would be undertaken under appropriate supervision

3.14.24. Whilst the applicant seeks site access locations on minor roads, it describes that this has not been viable in three locations, with two accesses being located on the A616 and one access on the A617. All 3 of these access locations are existing field accesses that are used by agricultural vehicles.

3.14.25. The applicant recognises that in such a rural location some roads proposed to be used for construction are of a width not sufficient for two vehicles to pass comfortably. The applicant proposes that passing places would be

constructed, within the Order limits, along relevant sections of the construction traffic route to enable the safe passing of two vehicles.

3.14.26. The applicant explains that through continued liaison with the highway authority, the long-term status of the installed passing places would be agreed on a location-by-location basis. The passing places could be removed post construction and the verge reinstated or retained thereafter initially for community benefit and later on for the decommissioning phase.

3.14.27. The applicant sets out that the oCTMP includes:

- an outline travel plan that would be finalised at detailed design stage. This would set out separate travel-planning measures to reduce vehicle trips to the proposed development
- construction of site access locations, which would include appropriate geometry and visibility splays
- advanced warning signage that would advise other road users of the presence of construction traffic during the construction phase
- traffic marshals and banksmen that would be used to ensure the safe passage of construction vehicles at sensitive locations, secondary accesses and during the movement of AILs
- speed restrictions for construction related traffic at locations where pedestrian interaction would likely be higher
- as part of the CTMP, a stage 1 road safety audit (RSA) would be conducted at site access junctions to identify any additional road safety measures

Assessment of likely significant effects

3.14.28. For assessment purposes and as a worst-case scenario, the applicant assumes that the proposed development would be constructed with the three southern phases being built concurrently, followed by the two northern phases over a period of 24 months.

3.14.29. The applicant presents construction trip data in relation to the construction programme on a monthly basis in Chapter 14, table 14.14 [REP4-011].

3.14.30. The applicant applies the screening criteria to the highway links to determine which are to be taken forward for assessment. In doing so the applicant notes that high percentage changes can be associated with low baseline traffic flows rather than the intensity of the construction traffic flows.

3.14.31. The applicant goes on to present its assessment of significance against the potential effects listed at paragraph 3.14.16.

Severance of Communities

3.14.32. Using Carlton Lane as an example, the applicant notes there would be a 62% increase in traffic flow during the peak construction phase, equating to 133 movements over a 10-hour period. When this is added to the baseline, this results in a negligible effect on severance, because there would be sufficient

time between vehicles for people to cross the road. Therefore, professional judgment is also applied to assess the effects on severance.

3.14.33. For the 12 highway links taken forward for assessment the applicant identifies no significant effects on severance.

Driver stress and delay

3.14.34. The IEMA guidelines indicate that delays are likely to be significant only when the traffic on the network is already at or near its capacity. For this assessment, the applicant does not carry out capacity evaluations of local junctions as construction vehicles would be scheduled to avoid peak hour travel, when congestion and traffic levels are reduced, thereby mitigating potential capacity constraints.

3.14.35. The applicant considers that similar to the issue of severance, using a percentage change in traffic to assess the impact on driver delay is deemed inappropriate when baseline traffic volumes are low and would not result in increased driver stress or delay. Hence no significant effects are identified.

Pedestrian and cyclist delay

3.14.36. The applicant uses its professional judgment to determine whether such delays constitute a significant impact in line with the IEMA guidance and, considering the ease with which a pedestrian or cyclist would be able to cross the road given the availability of gaps in traffic flow, identifies no significant effects in terms of pedestrian and cyclist delay.

Non-Motorised User Amenity

3.14.37. The applicant considers that likely effects on non-motorised user amenity during the construction phase would be temporary in nature. For the reasons outlined above, the applicant considers the magnitude of the effects to be low. Overall, the effect on non-motorised user amenity is considered by the applicant to be minor or negligible and not significant.

Fear and intimidation on and by road users

3.14.38. The applicant describes with reference to the IEMA guidance that levels of fear and intimidation are already classified as up to ‘great’ on roads within the study area. As this classification would not be affected by the proposed development the impact would be negligible and hence not significant.

Road user and pedestrian safety

3.14.39. The applicant sets out that additional traffic would be present on the network during construction, but this represents a relatively small percentage of the total volume of traffic already present on the overall network, although this percentage is larger in areas of low baseline traffic levels. Traffic associated with the construction of the proposed development would result in no more than a marginal increase in the risk of collisions.

3.14.40. Several links have no pedestrian or cycling facilities meaning pedestrians are forced to walk along the side of the carriageway, with a fatality involving a cyclist reported on Moorhouse Road in December 2024. Specific measures within the oCTMP would seek to address such issues by reducing permitted construction traffic speeds and increased signage to raise driver awareness. The increase in traffic and specifically HGVs does increase the risk of a collision. At these locations, the effect is assessed by the applicant as 'minor adverse.'

3.14.41. The overall significance of the effect on highway links within the study area is assessed as not significant by the applicant.

Hazardous and large loads

3.14.42. Some deliveries to the site during the construction phase may be regarded as hazardous loads, such as oil for the transformers. The applicant states that movement of hazardous loads would be undertaken in accordance with the appropriate regulations and documentation.

3.14.43. AILs would be delivered under the Special Types General Order Regulations and access would be from the nearest known heavy load routes (the A1, A617 and A616). These movements would be managed so that the potential effects are mitigated appropriately, this may include a police escort, temporary localised road closures and plating and packing of the kerbs to avoid damage. Whilst these movements would cause localised traffic disruption during their occurrence, the volume of movements would typically be in the order of 25 deliveries at the receiving accesses over a period of a few months and would not influence the assessment outcomes.

3.14.44. Hence in overall terms the applicant considers that the likely effects of the transport of construction related hazardous and large loads would be negligible and temporary and therefore not significant.

Operational phase traffic

3.14.45. The applicant concludes that traffic levels during the operational phase would be fewer than those outlined and assessed for the construction phase and as such, effects on collisions and safety, severance, driver delay, pedestrian delay and amenity and hazardous loads during the operational phases are considered to be negligible and not significant.

Cumulative effects

3.14.46. The assessment of cumulative effects on traffic and transport has followed the methodology set out in the ES Chapter 2 Environmental Impact Assessment (EIA) [APP-045].

3.14.47. The applicant sets out [REP4-011] section 14.10 that because of the mainly rural nature of the location of the proposed development and the construction routes, very few of the links are expected to experience cumulative effects. The links impacted would be limited to the A1, A46, A617, B1164 and Caunton Road.

3.14.48. For most of the cumulative developments, the applicant considers that the resultant difference in traffic movements on these links would likely be within the typical daily fluctuations in traffic levels and unnoticeable in the road operations or performance.

3.14.49. The applicant forecasts that the construction route for Knapthorpe Solar Park would add 14 two-way daily trips onto Caunton Road during the construction period. The applicant concludes that the level of traffic increase from cumulative development would not influence its summary outcomes on significance of effects.

3.14.50. The applicant states that the most notable cumulative development would be the A46 Newark Bypass, which proposes to widen 6.5 km of the existing single carriageway to a dual carriageway, to provide two lanes in each direction between Farndon and Winthorpe roundabouts near Newark-on-Trent. The construction activities for this Nationally Significant Infrastructure Project (NSIP) and the proposed development may overlap. The applicant considers that any cumulative traffic impacts would predominantly focus on the use of A roads and would be subject to appropriate traffic management measures implemented to minimise disruption and maintain free-flow operations.

3.14.51. The applicant concludes that no significant cumulative effects would be likely to occur with respect to traffic and transport.

ISSUES CONSIDERED DURING THE EXAMINATION

3.14.52. Issues raised by interested parties (IP) as reported by the applicant in its Responses to Relevant Representations Report [REP2-115] were included in the matters raised by NCC in its LIR [REP1-078] and NH in its written representation [REP1-082]. These matters were concerned with:

- transport assessment methodology
- road safety
- construction traffic management

Transport assessment methodology

3.14.53. In its LIR [REP1-078], NCC raised concerns with regard to the adequacy of the applicant's transport assessment, in particular with respect to the study area, as the applicant had not considered the impact of construction traffic accessing the proposed development from the west, or taken account of different phasing scenarios to provide a reasonable worst case assessment.

3.14.54. In the applicant's draft statement of common ground (SoCG) with NH [REP1-053] areas yet to be agreed included:

- the inclusion of the A1 in the applicant's assessments given that the applicant identifies the A1 as a key route for access to the site, particularly for HGVs and AILs associated with the construction phase
- clarification on the total number of AIL movements anticipated, including their routing, weights, dimensions and expected frequency in relation to

the proposed development and demonstration that SRN junctions can accommodate the abnormal loads
- details of the expected hourly traffic flow, shift patterns and workforce numbers to enable NH to determine the potential impacts on the SRN
- provision of flow diagrams for construction traffic for NH review
- trip generation and trip distribution to enable NH to comment on the acceptability of the traffic impact of the proposed development, and advise whether further junction capacity assessments are required on the SRN junctions
- further information regarding the decommissioning phase for the proposed development to be provided for NH review

3.14.55. In its first written questions (ExQ1) Q7.1.1 [PD-008], the Examining Authority (ExA) asked the applicant to explain why using percentage change, sometimes over 5000%, for example HGVs on Ossington Lane, would not be an appropriate approach for the assessment of: non-motorised user amenity, severance of communities, driver stress and delay, and road user and pedestrian safety.

3.14.56. In response to this question, the applicant stated that the IEMA guidelines outline that for many effects there are no simple rules or formulae that define appropriate assessment thresholds. Therefore there is a need for interpretation and judgement. Assessment of certain impacts may depend more on description and judgement than any commonly agreed method [REP2-117].

3.14.57. The applicant went on to explain that this was a common approach within comparable ES assessments of traffic movement. For example the Cottam Solar Project, where professional judgement was used to determine effects on roads that were predicted to experience a high percentage change, but where the existing extremely low level of traffic on the road would be increased by a modest number of construction vehicles.

3.14.58. In response to NCC's and NH's comments the applicant updated its ES Chapter 14: Traffic and Transport [REP2-028], its TS report [REP2-066], and the figures, tables and drawings listed above at 3.14.4. These updates showed the inclusion of the A1 northbound and southbound, the A616 eastbound and the A617 westbound. They also provided further details on the calculation of construction trips.

3.14.59. The draft SoCG between the applicant and NH [REP3-075], showed relevant matters agreed. Also both parties noted that there was no direct access off the SRN into the site of the proposed development.

3.14.60. In the applicant's draft SoCG with NCC [REP3-069] NCC stated that it sought traffic flow diagrams to show volumes on links and a plan showing the location of each phase.

3.14.61. Following further updates and further information provided by the applicant including its TS report [REP2-066], the final signed SoCG with NCC [REP6-

040] showed that all matters with regard to scope and methodology had been agreed.

ExA's consideration

3.14.62. The ExA considers the applicant's responses to the requests made by NH and NCC with regard to transport methodology are satisfactory. The ExA recognises that transport assessment methodology matters were agreed between the applicant and both parties by the close of the examination.

3.14.63. The ExA finds the applicant's approach to assessment methodology consistent with the process set out in section 5.14 of EN-1.

Road safety: National Highways

3.14.64. In the applicant's draft SoCG with NH [REP1-053] areas yet to be agreed included details, including the dimensions of the signs of any proposed signage, both temporary and permanent, that the applicant would install to on the SRN.

3.14.65. Whilst the applicant agreed protective provisions for the protection of NH, as stated in NH's closing statement [REP6-076], NH remained of the view that it should be an approver of requirement 5 of the dDCO 'Approved details and amendments to them' [REP6-004].

3.14.66. In its closing statement NH considered that its approval would be required where amendments to approved details related to SRN safety, particularly given the potential for proposed works over the A1 (see work no. 8) as shown in sheet no. 26 and 28 of the Works Plans [APP-019]. Whilst NH stated such amendments would be unlikely, the impact could be severe. It considered that development over an operational motorway or trunk road would present inherent safety risk equivalent to development beneath or adjacent to it [REP6-076].

3.14.67. In an additional submission [AS-084] NH provided examples of two other made Orders, which it considered relevant in addition to the Viking CCS Pipeline made DCO which it had already provided. NH referred to these as the East Midlands Gateway Phase 2 (EMG2) and the National Grid (Yorkshire Green Energy Enablement Project Development Consent Order 2024 (Yorkshire Green).

3.14.68. NH stated that Yorkshire Green was an energy NSIP determined by the same Secretary of State as the proposed development, which it considered involved a materially similar interface with the SRN. NH concluded that this further confirmed that decisions of the Secretary of State in 2024 and thereafter supported NH's position in relation to the proposed development.

3.14.69. In its closing statement [REP6-064] the applicant stated that it did not consider any of the precedents were relevant, as none of its physical works could or would interact with the SRN, unlike the examples cited. The applicant considered that the effect of NH's request would be for every

highway related submission needing approval by both NH and NCC, which would be entirely disproportionate given the lack of impact to the SRN.

3.14.70. The applicant considered that the premise for NH's position was that neither Newark and Sherwood District Council (NSDC) or NCC in their role as the relevant authority could be relied on to act reasonably or rationally, and within their statutory duty and that this would not provide an appropriate justification for the type of approval NH was seeking.

ExA's consideration

3.14.71. With regard to NH's request to be an approver for the purposes of discharging requirement 5: Approved details and amendments to them, the ExA finds by inspection of sheets 25 and 26 [APP-019], as referred to by NH [REP6-076] that work no.8 would be on an existing road that would be used to access the site of the proposed development that is over the A1.

3.14.72. Work no.8 relates to works on public highways within the Order limits to facilitate access to other numbered works. As such, the ExA considers that such work on an existing road that runs over the A1 is of a very different character to the comparator made Order precedents referred to by NH. These relate to the design, engineering and construction of, a new overhead national transmission electricity line over the SRN (Yorkshire Green), and a new gas pipeline (Viking CCS) that would be installed underneath the SRN.

3.14.73. The ExA considers it reasonable to conclude that NCC would be competent to approve details and amendments to plans of relevance to work no.8, given that this relates to a road over which NCC has authority.

3.14.74. Irrespective of this conclusion, the ExA notes that NH has protection in the form of schedule 13 part 4 of the dDCO [REP6-004] at paragraph 42 (3), where it says that no works in carrying out, maintaining or diverting the authorised development may be carried out under or over the strategic road network unless such works are agreed in writing with NH at the discretion of NH.

3.14.75. The ExA finds that NH provided no reasonably comparable examples for solar NSIPs that required NH either to be an approver or consulted on such matters by the highways authority or planning authority when acting as the discharging authority.

3.14.76. The ExA therefore finds no reason to recommend amendment to the applicant's final dDCO [REP6-004] requirement 5.

Road safety: Nottinghamshire County Council

3.14.77. In its LIR [REP1-078], NCC raised concerns that the safety, suitability and form of the proposed site accesses, as well as passing places, had not been demonstrated to be acceptable in principle.

3.14.78. In the applicant's draft SoCG with NCC [REP3-069] the matters not yet agreed included the provision of:

- traffic surveys, including speed surveys, for many of the accesses that would establish the required visibility splays
- further information that would inform the design of site accesses to establish the principle of acceptability
- Road Safety Audits (RSA) for those accesses, either proposed or amended (with increased usage) which have apparent highway safety concerns to show there would not be a road safety problem or that it could be removed, with reference to the Nottinghamshire Highway Design Guide

3.14.79. Traffic and transport matters were discussed at issues specific hearing (ISH) 3 [EV7-002, EV7-004, EV7-006, EV7-008] on environmental matters. In its post-hearing submissions [REP3-108] NCC proposed a new draft requirement relating to detailed highway approval for inclusion in the dDCO.

3.14.80. In its ExQ2 Q2.2.15 [PD-011], the ExA asked NCC to identify precedent for this in made solar DCOs, other made DCOs or justify it in relation to guidance or other reasons.

3.14.81. In its response, NCC said that whilst detailed highway approval had not previously been secured through a standalone requirement, it was common practice for details of vehicular and pedestrian access to be submitted to and approved by the planning authority as a component of the detailed design approval. NCC said that it would prefer for this to be secured through a requirement rather than through its approval of a CTMP [REP4-063].

3.14.82. NCC's closing statement [REP6-066] compared access during construction with access during operation and whilst satisfied with proposals during construction, that would include measures in a CTMP, it remained concerned about access during operation where it considered that:

- traffic movements would be unmanaged and continuous
- the measures and protocols in the outline environmental management plan [REP1-034] would be difficult to enforce
- reliance on banksmen would be unrealistic, requiring them to cross over roads where visibility has been shown to be deficient
- visibility splays would have to be permanently achievable, maintainable within highway control, and enforceable over time
- the Design Manual for Roads and Bridges (DMRB) visibility standards would not be met

3.14.83. NCC remained concerned that for some accesses the required visibility splays would rely on ongoing management of land and vegetation outside NCC's control. It considered that coppicing proposed during construction would be likely to promote rapid regrowth and thickening of hedgerows at the base, potentially worsening visibility in the longer term.

3.14.84. NCC continued that as no access had been subject to a RSA to determine the principle of acceptability, these would be prepared for each construction access post consent, as stipulated by the oCTMP. However, RSAs fundamentally address poor visibility by recommending that suitable visibility

splays are provided and kept clear. The dDCO would not allow the necessary hedgerow removal to account for this and therefore at several accesses the visibility could either not be provided and maintained. As such, the commitment to post consent RSAs would not alleviate the issues raised.

3.14.85. In the applicant's closing statement [REP6-064] on the matter of safe operational site access, passing places and the use of the DMRB guidance, with reference to its oCTMP [REP6-032], the applicant considered that:

- it had applied a proportionate approach to access visibility for the proposed development, evidenced by established practice accepted through precedent DCOs
- while DMRB guidance was often used as a reference point by local highway authorities, it was not intended to be applied rigidly to all forms of development access. In particular, it was not designed for lightly trafficked rural lanes or for temporary construction accesses, where applying full strategic road standards would be disproportionate to the nature and scale of traffic movements
- it was a well-established characteristic of rural highway networks that many existing accesses do not comply with full DMRB visibility standards, including access from rural roads into agricultural fields, farms and farmyards and commercial and residential premises
- existing accesses operated safely within the context of low traffic flows, lower vehicle speeds than the posted speed limit and increased driver awareness and caution in rural environments
- highway authorities routinely accepted such arrangements as part of the baseline highway environment
- solar NSIP accesses, particularly during the operational phase, were functionally comparable to these existing rural accesses and should be considered within the same context

3.14.86. On the matter of further speed surveys to inform access design the applicant considered that:

- its oCTMP required further speed surveys to be undertaken as part of the detailed design of the proposed accesses
- should the further speed surveys determine that the observed 85th percentile speeds were higher than those used to inform the preliminary design of the accesses included in the ES, the oCTMP secured the ability for the temporary reduction of speed limits on the approaches to construction accesses, enabling visibility splays to be achieved in accordance with the reduced temporary speeds
- vegetation management measures were secured to enhance intervisibility at access locations, further supporting the safe operation of construction traffic during the construction phase

3.14.87. On the matter of RSAs being used to inform access design the applicant considered that:

- the oCTMP and requirement 14 of the dDCO secured the requirement for RSAs to be undertaken in accordance with GG 119 of the DMRB, which

would be prepared as part of detailed design. This approach would ensure that all temporary and permanent accesses and traffic management measures, are subject to an appropriate level of independent safety scrutiny before implementation
- there are made Orders for solar NSIPs that have relied on safety audits being secured through the oCTMP including Gate Burton Energy Park (July 2024) and East Yorkshire Solar Farm (May 2025)
- the Secretary of State was satisfied that highway safety could be appropriately managed post consent, and that stage 1 RSAs were not a prerequisite to the making of the Order

3.14.88. In summary the applicant considered that experience of consented solar NSIPs demonstrated that:

- DMRB standards were primarily intended for trunk roads and the strategic road network, and should not be applied rigidly to rural local roads
- many existing rural accesses operated safely without DMRB compliant visibility splays
- construction phase access risks could be effectively managed through CTMPs and temporary traffic management
- the very low level of operational traffic associated with solar NSIPs justified a proportionate approach to visibility
- avoiding extensive hedgerow and tree removal represented a balanced outcome when considering highway safety, landscape and biodiversity

ExA's consideration

3.14.89. The ExA finds that NCC presented no substantive evidence to challenge the applicant's conclusion that the effects of operational traffic would be negligible because the operational traffic volumes would be so low.

3.14.90. The underlying concern of NCC is that should further highway safety related information be found through the implementation of the oCTMP after the making of the Order, for example traffic speed surveys and RSAs that confirmed its concerns over the safety of site accesses during operation, these could not be addressed.

3.14.91. Given the negligible road safety impact reported by the applicant during the operational phase, the ExA considers that the likelihood of NCC's road safety concerns described at paragraph 3.14.83 arising would be low. Nonetheless, the ExA considers that the applicant has powers to mitigate any risk, as set out in the final dDCO [REP6-004] including articles 16 'Access to works' and 18 'Traffic regulation measures.' For example, the latter would enable the applicant to set reduced speed limits. NCC would regulate the exercise of such powers as described in these articles.

3.14.92. The applicant has particular powers with regard to vegetation management, including a provision under article 39 [REP6-004] to cut back and lop trees and shrubs if they cause danger to persons using the proposed development, subject to regulation by NCC as detailed in the same article.

3.14.93. Hence, taken together the powers and requirements set out in the dDCO, which are widely precedented in comparable made Orders as set out by the applicant at paragraph 3.14.87, the ExA considers these to be sufficient to ensure the safety of the local highway network through all phases of the proposed development.

3.14.94. The ExA therefore finds no reason to recommend amendment to the applicant's final dDCO [REP6-004] as proposed by NCC.

3.14.95. With regard to road safety overall the ExA finds the applicant's approach to road safety to be consistent with other made Orders and consistent with EN-1 section 5.14, accounting for the provisions contained within its recommended DCO (rDCO).

Construction traffic management

National Highways

3.14.96. In its written representation [REP1-082] NH noted that the proposed development may interface with NH's A46 Newark Bypass NSIP, which was granted development consent by the Secretary of State for Transport on 1 October 2025. NH noted that delivery timings, as part of the next Road Investment Strategy, were scheduled to be published in March 2026. NH reserved its position on the construction interface until further details were known.

3.14.97. In the applicant's draft SoCG with NH [REP1-053] and its final signed SoCG [REP6-044] with NH areas yet to be agreed included:

- amendment of schedule 2 requirement 14 of the dDCO to ensure that any detailed CTMP submitted has to be approved by NH as far as the matters concerned relate to the SRN
- amendment of requirement 19 of the dDCO to ensure that any detailed decommissioning and restoration plan (DRP) submitted has to be approved by NH as far as the matters concerned relate to the SRN

3.14.98. In terms of justification NH considered approval was required in this case specifically because there was a need to control the construction traffic interface between the proposed development and its A46 Newark Bypass NSIP, which would border the Order limits to the south.

3.14.99. In its closing submissions [REP6-076] NH stated:

- the dDCO included a deemed consent mechanism which could result in the relevant request for approval being deemed granted, where NH's representation had not been made to the applicant by the relevant authority
- there existed a clear risk that safety critical matters affecting the SRN could be approved without NH's input, contrary to its statutory responsibilities

3.14.100. In its closing statement [REP6-064] the applicant considered that the premise for NH's position was that NCC in its role as the relevant authority could not be relied on to act reasonably or rationally, and within their statutory duty, and that this would not provide an appropriate justification for the type of approval NH was seeking.

Nottinghamshire County Council

3.14.101. With regard to passing places NCC, in its closing statement [REP6-066], considered that passing place provision is not justified by average traffic flows but instead by network function. It considered that low flows would still generate opposing movements, and the absence of sufficient passing places would convert every meeting into a stopping, reversing, or shoulder-overrun manoeuvre.

3.14.102. NCC concluded that passing places should operate as a connected system, and the safety of any one section depends on the functionality of adjoining passing places. NCC considered that the TS demonstrated that the proposed development would not meet the necessary criteria and therefore did not demonstrate that the single-track road network would operate safely during construction or operation. NCC considered that whilst the wording of the dDCO (article 12(2)) allowed minor changes it would not allow wholesale redesign, hence it concluded that issues could not be addressed post-consent.

3.14.103. In its final SoCG with NCC [REP6-040] the applicant sets out that it would provide any of the temporary passing places on a permanent basis once the final design is agreed with NCC, and after NCC had specified which of the passing places it wished to retain permanently. The applicant considered that the dDCO (article 12(2)) would enable passing places currently identified as being temporary to be made permanent if NCC required this.

3.14.104. In the applicant's closing statement [REP6-064] it considered that the very low level of operational traffic associated with solar NSIPs justified a proportionate approach to visibility.

ExA's consideration

3.14.105. The ExA sees no disagreement between NH and the applicant that, based on the applicant's programme, it is probable that the construction of the A46 Newark Bypass NSIP would coincide with the construction of the proposed development.

3.14.106. However, despite its generalised concerns regarding temporal and spatial overlap, NH does not provide any evidence that challenges the applicant's conclusion that traffic and transport effects, either caused by the construction of the proposed development or cumulatively with the construction of other developments, including the A46 Bypass, would not be significant.

3.14.107. Hence, the ExA sees no reason to diverge from the well precedented principle of requirements being discharged by a relevant local highway or planning authority, in consultation with an additional national statutory body

and applies the same reasoning to the discharge of requirement 19: Decommissioning and restoration.

3.14.108. The ExA therefore finds no reason to recommend amendment to the applicant's final dDCO [REP6-004] requirements 14 and 19.

3.14.109. With regard to NCC's position on passing places and the applicant's response, the ExA considers the applicant's position with regard to visibility to be reasonable in relation to operational traffic, as with lower volumes the likelihood of the situation that NCC sets out at paragraph 3.14.101 would be lower.

3.14.110. With regard to the permanency of passing places. the ExA agrees with the applicant that the undertaker would be able to 'make and maintain passing places' as set out under article 12 (2)(b), subject to the agreement of NCC.

3.14.111. EN-3 paragraph 2.10.144 sets out that it may be appropriate for any non-permanent highway improvements carried out for the development (such as temporary road widening) to be made available for use by other subsequent solar farm developments.

3.14.112. Hence, the reluctance of the applicant to commit to making all passing places permanent in its final dDCO, given the potential for other solar farm development, solar panel replacement activity to take place during the operational life of the proposed development, and the decommissioning of the proposed development, weighs slightly against the applicant's position.

3.14.113. The ExA considers that the reliance by the applicant on a CTMP to control construction traffic and its effects, which would be approved by NCC as the local highway authority, is consistent with the approach taken by other NSIPs and that this would be secured by requirement 14 of its rDCO (Appendix A).

3.14.114. In this respect the ExA considers the applicant's response to be satisfactory, whilst accepting that such controls would still allow minor adverse effects in relation to traffic and transport during construction, as predicted by the applicant in its assessment.

3.14.115. With regard to traffic management overall the ExA finds the applicant's approach to be consistent with other made Orders and consistent with EN-1 section 5.14, accounting for the provisions contained within the rDCO.

3.14.116. With the exception of paragraph 2.10.144 the ExA finds there is consistency with the mitigation measures set out in EN-3.

CONCLUSIONS

3.14.117. In conclusion, accounting for the measures set out in its recommended DCO (rDCO), the ExA assigns a little weight to the issue against the making of the Order.

3.15. WATER ENVIRONMENT AND FLOOD RISK

INTRODUCTION

3.15.1. This section considers the effects of the proposed development on the water environment, including the applicant's assessment of flood risk.

3.15.2. In its consideration of the effects on the water environment and flood risk, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), in particular section 5.8 'Flood Risk' and section 5.16 'Water Quality and Resources'
- the NPS for Renewable Energy Infrastructure (EN-3), in particular section 2.10 'Solar Photovoltaic Generation'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.15.3. The applicant's assessment of the effects of the proposed development on the water environment and flood risk is contained within Environmental Statement (ES) Chapter 9 Water Resources [APP-052]. This was updated as revision 2 [REP3-022].

3.15.4. The assessment is supported by:

- Flood Risk Assessment (FRA) [APP-228], updated as revision 4 [REP3-050]
- Water Framework Directive (WFD) Assessment [APP-229]
- Outline Construction Environmental Management Plan (oCEMP) [REP4-017]

3.15.5. The applicant's sequential and exception tests with regards to the siting of the proposed development are set out in Appendix 1 of the Planning Statement [REP3-018].

Baseline

3.15.6. The water environment and flood risk study area, termed the 'Core Study Area', is comprised of the Order limits. A 5km buffer around the Order limits is applied for the assessment of potential effects on hydrological and hydrogeological receptors. This is also used for the cumulative assessment and is shown in Figure 27.

3.15.7. A smaller 1km study area is applied around the Order limits to assess private water supplies and public water supplies abstractions. This is termed the water supplies study area.

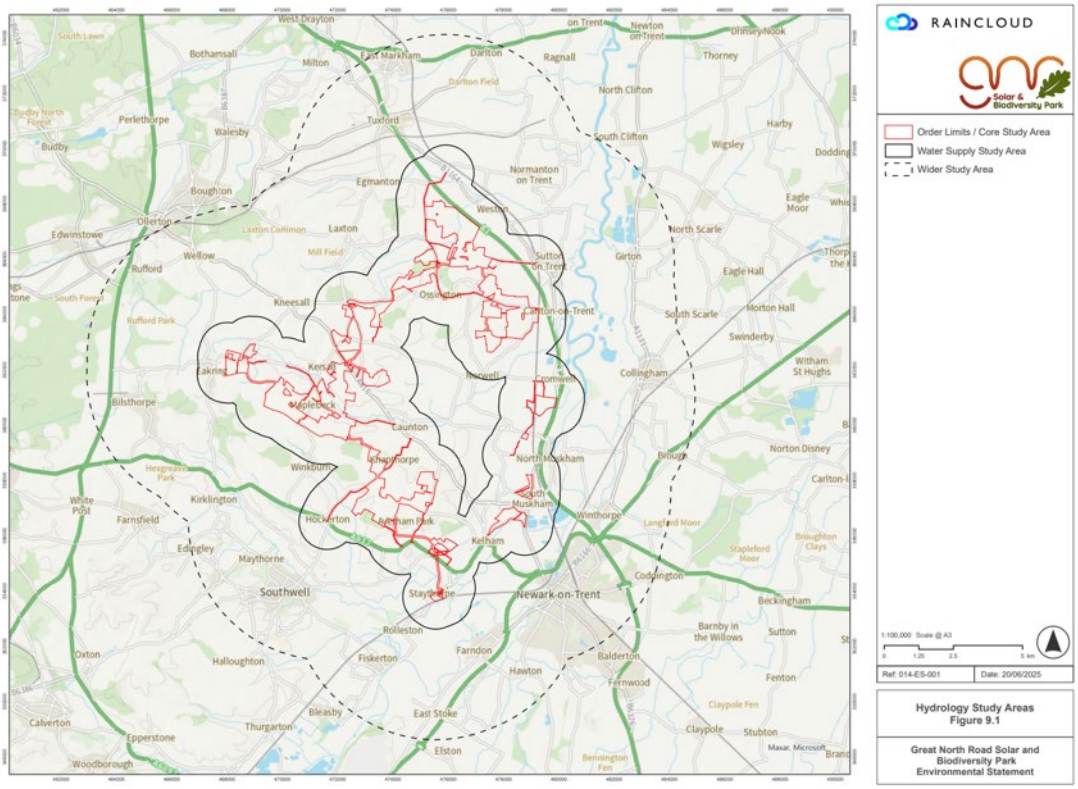
3.15.8. A desk-based approach to identifying receptors was employed, utilising data sets from the regulators and consultees such as the Environment Agency (EA), Natural England (NE) and internal drainage boards (IDB). The applicant also undertook site walkovers in August 2024, October 2024 and February 2025 to ground-truth the location and visible condition of receptors such as surface water and superficial geology.

3.15.9. The baseline features and topics assessed are explained by the applicant in detail in section 9.4 of ES Chapter 9 [REP3-022]. These include the following:

- topography and land use
- rainfall
- solid geology
- superficial geology
- hydrogeology
- contaminated land
- surface hydrology
- site drainage
- subsurface drainage
- surface water continuity
- groundwater abstractions
- private water supplies
- designations
- flooding

3.15.10. The applicant considers that, without the implementation of the proposed development, the future baseline of the Order limits area would be unlikely to change substantially. The Order limits would continue to be intensively managed for agricultural purposes.

Figure 27: The water environment study area



Source: ES Figure 9.1 [APP-148]

Methodology

3.15.11. The assessment of hydrological and hydrogeological features is presented in ES Chapter 9 [REP3-022]. This adopts a source-pathway-receptor approach, whereby the sensitivity of identified receptors and the magnitude of potential effects upon those receptors are evaluated across the study areas. Effects are assessed for the construction, operation, and decommissioning phases of the proposed development.

3.15.12. As the proposed development would be classed as essential infrastructure and is expected to be operational between the 2050s and 2080s, the river flow allowance is the higher central band of 2%, in accordance with the Lower Trent and Erewash Management Catchment peak river flow allowances.

3.15.13. The approach to determining the sensitivity of receptors and magnitude and significance of effects is set out in Tables 9.2, 9.3, and 9.4 of ES Chapter 9 [REP3-022] respectively. Significant effects include, amongst others, those where there would be the potential for the downgrading of the WFD classification of a river or stream, a permanent or long-term degradation of groundwater quality, or a material increase in the probability of onsite and offsite flooding.

Mitigation

3.15.14. The proposed development includes a number of embedded mitigation measures incorporated into its design, which are set out within the oCEMP

[REP4-017]. The oCEMP sets out key measures to protect environmental resources during the construction phase of the proposed development.

3.15.15. In relation to hydrogeological receptors, key measures set out within the oCEMP include:

- 10m watercourse edge buffers for all construction works, including watercourses maintained by the IDB
- horizontal directional drilling under watercourses
- utilising existing access roads and tracks already in place where possible to minimise ground disturbance and hence the need for further water crossings
- the design of watercourse crossings that are appropriate and sensitive to habitats, and include appropriate provision and design features for future flooding (when permanent)
- a pollution prevention plan for the appropriate management of sediment and surface water run-off generated during the construction phase

3.15.16. The applicant also explains that the proposed development has been designed to avoid placing work no. 1, 4 and 5a and 5b within the 1% Annual Exceedance Probability (AEP) event (plus climate change allowance of 39%) flood modelling level for the River Trent, and the 0.5% AEP tidal events (plus climate change).

3.15.17. The oCEMP would be secured under schedule 2, requirement 2 of the draft Development Consent Order (dDCO) [REP6-004].

Flood risk

3.15.18. The methodology for the FRA is set out in section A9.1.1.3 of the FRA [REP3-050]. This explains the relevant assessment criteria, site characteristics and climate change allowances taken into account for the assessment. Fluvial, pluvial, and tidal flooding are considered.

3.15.19. The applicant classes flood risk to be negligible where little or no risk is identified. Flood risk is considered to be low where a theoretical risk is identified but mitigating factors may influence flood levels, or moderate to high where modelled levels or historical events show risk to the work areas.

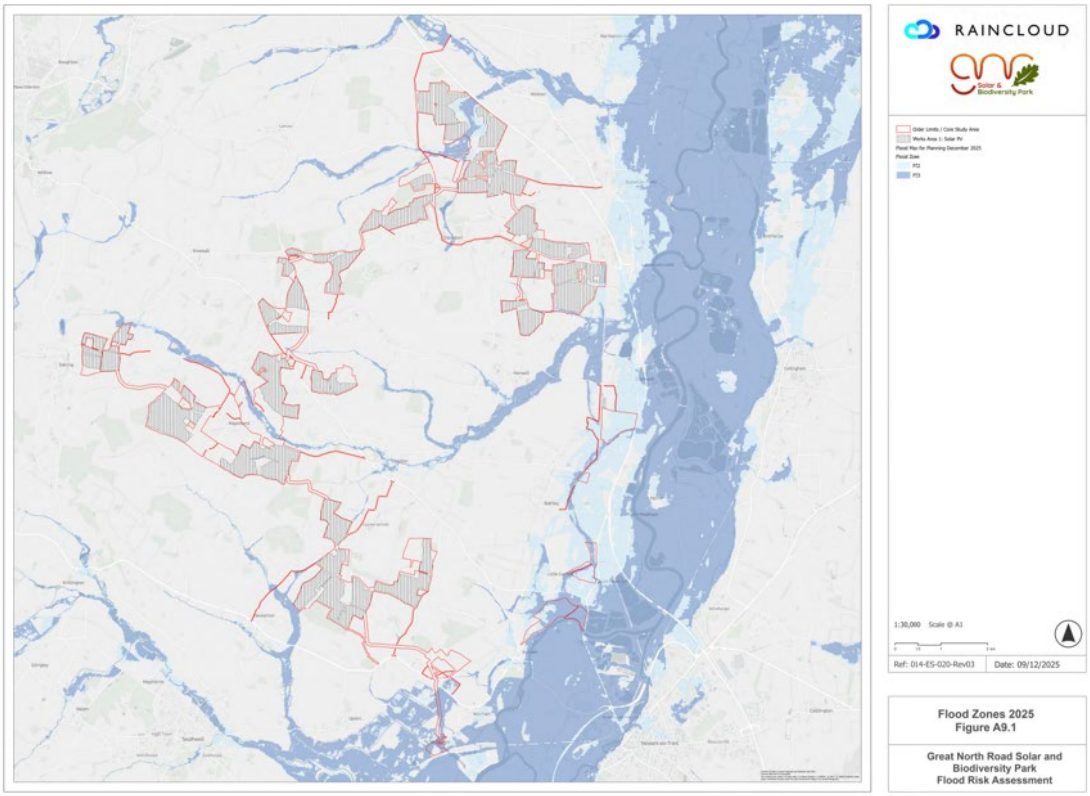
3.15.20. The FRA demonstrates that the Order limits for the proposed development are predominantly located in flood zone (FZ) 1 (89.99%), while 10.01% lie in FZ 2 and FZ 3, as shown in Figure 28 below. The works within FZ 2 and FZ 3 are work no. 2 (cables), work no. 3 (mitigation and enhancement), work no. 6 (connection to consented Staythorpe battery energy storage system) and work no. 7 (connection to National Grid Staythorpe Substation).

3.15.21. Appendix 1 of the Planning Statement includes the applicant's sequential test and exception test [REP3-018]. The sequential test shows how siting for the proposed development has been approached in order to locate the most electrically sensitive infrastructure (photovoltaic (PV) arrays, the substation compounds, inverters and transformers) outside of FZs 2 and 3 to mitigate against the risk of flooding.

3.15.22. The exception test sets out that the proposed development would not lead to an increased risk of flooding or surface water run-off and highlights the sustainability benefits that would be delivered by the proposed development through the biodiversity mitigations and enhancements proposed.

3.15.23. The applicant therefore considers the sequential and exception tests to be satisfied.

Figure 28: Flood zones within the Order limits



Source: Figure A9.1 [REP3-050]

3.15.24. The applicant's FRA concludes that the risk of the proposed development flooding from all sources is low to negligible and is therefore not significant in EIA terms.

3.15.25. The applicant also concludes that the installation of solar PV arrays would not have the potential to substantially increase flooding via an increase in surface water run-off rates when compared to the baseline scenario. This is due to the envisaged establishment of vegetation under the drip lines from the solar panels, which would act to slow the transfer of run-off to the hydrological catchment downslope of the proposed development.

3.15.26. The magnitude of this effect on water courses and drainage ditches is therefore considered to be negligible, with negligible impact to surface water and negligible potential to cause flooding.

Assessment of likely significant effects

3.15.27. The potential effects of the proposed development on hydrological receptors are presented in section 9.6 of ES Chapter 9 [REP3-022] which assesses the

construction, operation and decommissioning phases of the proposed development. Effects arising during the construction and decommissioning phases are regarded as short term, reflecting their limited duration of up to two years. Effects associated with the operational phase are considered to be long-term, extending for up to 40 years.

Construction

3.15.28. The applicant concludes that no significant adverse effects would arise to any of the receptors assessed. A series of non-significant, negligible, adverse effects during construction would arise from impacts such as chemical pollution, erosion and sedimentation, impediments to flow, compaction of soils, and changes in soil patterns. They would be mitigated via measures and good practice guidance set out in the oCEMP [REP4-017], and the outline Soil Management Plan (oSMP) [REP3-066].

Operation

3.15.29. No significant adverse effects are identified to any receptors during operation. A range of non-significant, negligible, adverse effects during operation could arise from impacts such as chemical pollution from solar PV modules, chemical pollution from battery fire, foul water and increase in surface water run-off. Effects would be mitigated by the measures and good practice guidance set out in the oCEMP, as well as measures set out in the outline Fire Safety Management Plan (oFSMP) [REP6-033].

Decommissioning

3.15.30. Effects from decommissioning are predicted to be similar in nature to those during construction, as some ground-work would be required to remove foundations and hardstanding. These effects would be managed by the implementation of an outline decommissioning and environmental management plan, itself contained within the outline Decommissioning and Restoration Management Plan (oDRP). No significant adverse effects are identified to any receptors during the decommissioning phase.

Cumulative effects

3.15.31. No significant, cumulative effects have been identified by the applicant's assessment of effects.

WFD assessment

3.15.32. The applicant's WFD assessment concludes that there would be no degradation in the WFD status (chemical or ecological) of waterbodies which would interact with the proposed development [APP-229].

ISSUES CONSIDERED DURING THE EXAMINATION

3.15.33. Submissions concerning the water environment and the FRA were received principally from Nottinghamshire County Council (NCC) as lead flood authority in its LIR [REP1-078], and from the Environment Agency (EA) in its relevant representation (RR) [RR-054].

3.15.34. The principal issues and concerns considered during the examination were as follows:

- Concerns raised by NCC regarding the FRA
- the absence of detail related to the siting of construction compounds
- the potential loss of floodplain storage associated with the battery energy storage systems (BESS), and the resilience of the BESS to flooding
- the allowances for climate change included within the FRA
- surface water run-off and surface water flooding

Concerns raised by NCC regarding the FRA

3.15.35. In its LIR [REP1-078], as lead flood authority NCC made a number of detailed comments with regards to the applicant's FRA and associated drainage strategy. The comments included recommendations to provide further information around matters including the provision of sustainable drainage systems (SuDS) and the management of surface water, further detail on the drainage attenuation basin under the BESS, further detail on watercourse crossings, and confirmation of the modelling parameters used for the FRA. NCC considered that if these recommendations were not complied with, the proposed development would have a negative impact on the water environment and flooding.

3.15.36. The ExA sought clarification and further context on these comments in its written questions (ExQ)1 Q13.1.4 [PD-008], asking NCC to confirm if it agreed with the conclusions of the applicant's FRA and if it considered the FRA to be robust, as well as the nature of the negative impacts it had raised in its LIR.

3.15.37. In response [REP2-123], NCC stated that it considered the applicant's FRA and drainage strategy to be inadequate, noting the potential for the increased risk of flooding, and associated negative impacts such as the potential failure of equipment, inability to access sites for maintenance purposes, and erosion of soil/ ground.

3.15.38. At issue specific hearing (ISH) 3 [EV7-002, EV7-004, EV7-006, EV7-008], the ExA sought further clarity on NCC's concerns. NCC confirmed that, following further discussions with the applicant, it was satisfied that surface water (pluvial) risk could be managed adequately based on the principles outlined in subsequent revisions of the FRA, and that the drainage strategy could be adequately resolved through ongoing discussions with the applicant. NCC was satisfied that the recommendations in its LIR had been considered by the applicant and that there were no significant issues to be raised at this stage [REP3-108].

3.15.39. At the end of the examination, all matters concerning the water environment and flooding were recorded as agreed between the applicant and NCC in the final signed statement of common ground (SoCG) [REP6-040].

ExA's consideration

3.15.40. The ExA is satisfied that concerns raised by NCC have been adequately addressed and that the application contains sufficient information to understand the effect of the proposed development on flood risk and the water environment. The ExA is satisfied that the applicant's drainage strategy [REP3-052] is adequate.

Siting of construction compounds

3.15.41. In its RR [RR-054], the EA expressed initial concerns that there was limited detail of the siting of construction compounds, equipment and materials, and that construction compounds, equipment or materials located in FZ 3a or 3b could increase flood risk elsewhere (EA025). In response, the applicant updated the oCEMP at deadline (D)1 [REP1-030] to confirm that construction compounds would be located outside FZ 3a and 3b. A further update was submitted at D2 [REP2-050] to include a restriction that FZ 3a and 3b would not be used for the storage of construction materials or equipment.

3.15.42. During ISH3 [EV7-008], the EA confirmed that it was satisfied that the applicant had located all infrastructure outside of the design flood event, ensuring no loss of fluvial floodplain [REP3-101]. The EA stated that, as a result, no additional mitigation was required, and the proposed development was not expected to increase flood risk either on or off site [REP3-101].

ExA's consideration

3.15.43. Taking into consideration the explanations put forward by the applicant, and the agreement of the EA, the ExA is satisfied that all infrastructure related to construction would be located outside of a design flood event, ensuring no loss of fluvial floodplain. The ExA is therefore satisfied that the proposed development would not increase flood risk either on or off-site.

BESS floodplain storage and flooding resilience

3.15.44. In its RR the EA sought further clarity on the extent of the mitigation proposed in the BESS area, where flood water depths could exceed 0.4 metres [RR-054]. The EA considered that the level to which BESS infrastructure would be raised above the design flood level was not clear, and that were there to be any loss of floodplain storage, elements of the BESS in the north of work no. 5 could be at flood risk if not designed appropriately (EA027) [RR-054].

3.15.45. The ExA sought further context on this concern and asked the EA at ExQ1 Q13.1.2 [PD-008] if it considered that the FRA undertaken by the applicant was policy compliant. In response [REP2-125], the EA stated that it considered that the exception test was not satisfied due to the FRA's lack of consideration of flood risk from ordinary watercourses and the potential for the BESS to displace floodplain storage. This would potentially increase flood risk on-site and off-site, meaning that the exception test was not satisfied.

3.15.46. At ISH3 [EV7-008], the ExA explored the issue of the exception test and flood risk from ordinary watercourses. The EA stated that following further

discussions with the applicant, it found the applicant's assessment approach to be reasonable [REP3-101]. With respect to ordinary watercourses, the EA confirmed that upon further review, these appeared to be drains rather than ordinary watercourses, and that it therefore agreed with the applicant's FRA. The EA stated that the proposed development would therefore satisfy the exception test [REP3-101].

3.15.47. The applicant also confirmed that the FRA had been updated to explicitly cover flood risk from ordinary watercourses in proximity to work no. 5a and 5b (BESS and substation), which concluded that the watercourses would have the capacity to convey the 1% AEP event plus 39% climate change allowance without overtopping. As such, there would be no loss of floodplain storage at the BESS [REP3-101]. The applicant also stated that the outline drainage strategy (oDS), which would be submitted at D3, would provide a commitment for work no. 5a and 5b to incorporate a SuDS network. This would be designed to the 1% AEP plus 40% climate change event. Therefore, work no. 5a and 5b would be safe from surface water flooding and there would be no loss of floodplain storage [REP3-101]. The oDS was provided at D3 [REP3-052].

ExA's consideration

3.15.48. The ExA has considered the arguments put forward by the applicant with regards to the risk of flooding from ordinary water courses and the potential for the loss of floodplain storage from the construction of the BESS. The ExA is satisfied that the flood risk from ordinary watercourses has been adequately assessed, and that the BESS and the substation would incorporate a SuDS network with sufficient allowance for climate change.

3.15.49. Furthermore, as set out in ES Chapter 9 [REP3-022] the Order limits are mostly located in FZ 1 (89.99%), which comprises land having less than 0.1% (i.e. less than 1 in 1,000) annual probability of river or sea flooding. The remaining area of the Order limits (10.01%) is located in either FZ 2 or FZ 3.

3.15.50. The applicant states that the works associated with FZ 3b would be either below ground (cables) or involve the creation of biodiversity enhancements (such as grassland), which would not result in a loss of flood storage or have a perceptible effect on conveyance [REP3-101]. The ExA sees no reason to disagree with this and considers that the applicant has sought to minimise sites at higher risk of flooding within the Order limits.

3.15.51. The ExA is therefore satisfied that there would be no loss of floodplain storage at the BESS and that the applicant has undertaken the sequential test and exception test appropriately, in conformity with the provisions of section 5.8 of EN1.

Allowances for climate change in the FRA

3.15.52. In its RR [RR-054], the EA also queried whether the applicant had accurately taken account of the effects of climate change within its FRA, owing to a lack of clarity around Figure 9.18 in the initial version of the FRA. Within the FRA the applicant had referred to Figure 9.18 to demonstrate that all proposed

solar panels had been placed outside of the design event. However, this figure was named '1% AEP Defended Extents (CCP1)'. The EA sought clarity as to whether the extent shown in this Figure included the addition of 39% for the allowance of climate change.

3.15.53. The ExA raised this issue during ISH3 [EV7-008]. The EA stated that upon further consideration, this appeared to be a reporting error rather than a material error. The reporting discrepancy was related to the use of the central climate change allowance, whereas for essential infrastructure, a higher allowance would normally be applied [REP3-101].

3.15.54. The applicant confirmed that the climate change allowance dataset had been used solely as a validation tool, not as a standalone assessment, and that the conclusions in the FRA remained valid [REP3-101]. The applicant confirmed that the FRA would be updated to explain that the CCP1 dataset was used as a validation flood outline, not as the sole climate change scenario, and that work no. 1 (solar PV) was designed to be located outside the 0.1 % AEP event (1:1000-year event) [REP3-101]. The updated FRA was submitted at D3 [REP3-050].

3.15.55. In the final signed SoCG with the EA, all matters relating to water resources and flooding were recorded as agreed [REP5-032].

ExA's consideration

3.15.56. Having considered the applicant's explanations, and the agreement of the EA in the final signed SoCG, the ExA is satisfied that the climate change allowances used in the FRA are appropriate, and that the impact on climate change has been appropriately considered, as set out in paragraph 5.8.15 of EN-1.

Surface water run-off

3.15.57. Carlton on Trent Parish Council (CTPC) and other IP's raised concerns about the potential for increased flood risk caused by surface water run-off from the solar PV modules. These concerns related to considerations about whether the grass planted beneath the panels could sufficiently absorb such run-off, given the clay-based composition of the soil beneath the proposed panels, and therefore poor absorption rates [RR-025, RR-049, RR-214, RR-159, RR-178].

3.15.58. In response [REP1-065] the applicant stated that the use of grassland and wider vegetation planting within and around the PV arrays would provide an improvement to the existing agricultural scenario and would therefore not increase surface run-off. The applicant also cited existing EA research that stated that year-round vegetation cover and increased trees would increase the roughness of the ground surface and therefore lead to slower water run-off rates [REP1-065].

3.15.59. At ExQ1 Q13.1.1 [PD-008], the ExA asked the EA if it agreed with the applicant's assessment of the potential increase in surface water run-off from the solar panels as set out in the ES, and if the EA agreed that the

establishment of vegetation and grassland cover within the vicinity of the panels would lead to reduced surface run-off into surrounding watercourses. The EA responded that it agreed with the applicant's position, and that provided that vegetation would be allowed to establish beforehand, run-off comparisons into nearby watercourses should not be markedly different and could even be reduced compared to the baseline scenario [REP2-125].

3.15.60. Concerns were raised by the Joint Parishes Action Group (JPAG) and CTPC around the consideration of pluvial flooding, given the recent significant flood events experienced in Carlton-on-Trent, which resulted from surface water run-off coming across the fields where solar PV was proposed [RR-101], [RR-025].

3.15.61. In response [REP1-065] the applicant stated that pluvial flooding for all aspects of the proposed development has been assessed, and that the risk of pluvial flooding was considered to be low to negligible, including PV arrays which would be raised above ground level.

3.15.62. JPAG also contended that the applicant had not properly conducted the sequential test, stating that the FRA had not demonstrated that it is not possible to locate the proposed development on land identified as belonging to a lower flood risk category, that is FZ 2 and 3 [RR-101]. In response [REP1-065] the applicant stated that there was no other substation location that would have the necessary grid connection capacity for the proposed development. The applicant therefore disagreed that the sequential test would require them to consider alternative grid connections.

ExA's consideration

3.15.63. The ExA acknowledges the concerns put forward by CTPC, JPAG, and other IPs with regards to the potential for increased risk of pluvial flooding caused by surface water run-off from the solar PV modules. The ExA acknowledges that recent flooding events would give rise to concerns about this risk.

3.15.64. However, the ExA accepts the arguments put forward by the applicant with regards to vegetation planting slowing the progression of surface water run-off into surrounding watercourses, and notes both the research undertaken by the EA and cited by the applicant, as well as the agreement of the EA with regards to the applicant's position. The ExA is therefore satisfied that any additional risk posed to pluvial flooding caused by surface water run-off from the solar PV modules would be minimal.

3.15.65. Regarding the sequential test undertaken by the applicant, as above, the ExA is satisfied that this is adequate and meets the provisions set out in section 5.8 of EN-1.

3.15.66. The ExA is also satisfied that the FRA has considered surface drainage from the panels and is therefore consistent with the assessment provisions set out in paragraph 5.8.15 of EN-1 and paragraph 2.10.84 of EN-3.

Surface water flooding

3.15.67. CTPC made a number of submissions during the examination in relation to flooding [RR-025, REP1-072, REP3-104, REP4-061, AS-087]. In particular, CTPC considered that existing surface water flooding events in fields located along Ossington Road and within the village of Carlton-on-Trent would be exacerbated by the surface water run-off from the panels on the sloping fields along Ossington Road.

3.15.68. CTCP also commented that compaction of the soil around the solar panels from heavy machinery and grazing sheep, as well as the formulation of rivulets of compacted soil from water dripping off the panels, could lead to an increase in surface run-off and the formation of a column of water flowing into watercourses feeding the River Trent. This would further increase flood risk to the village of Carlton-on-Trent [REP1-072]. Furthermore, at ISH3 [EV7-002, EV7-004, EV7-006, EV7-008] CTPC highlighted the importance of the maintenance of SuDS to ensure that measures would remain effective at preventing surface run-off from affecting Carlton-on-Trent, given its location downstream of the panels and watercourses feeding the River Trent [REP3-101].

3.15.69. Similar concerns were raised by Tanya Grimes [REP1-133] in relation to the potential for flooding in Carlton-on-Trent, and in relation to a drainage dyke behind her garden along Ossington Road which is subject to flooding. The ExA visited Mrs Grimes' property during an access required site inspection (ARSI)1 [EV1-002], and viewed the fields, Ossington Road and the dyke of concern, adjacent to the property.

3.15.70. In response [REP2-115, REP2-116], the applicant noted that:

- A substantial body of research has outlined that solar panels do not have a significant effect on run-off volumes or peak flows; however, where the ground beneath the panels is bare, there may be an increase in peak discharge
- 80% of work no.1 (solar PV) for the proposed development is on slopes of less than 6%. Work no.1 (solar PV) is mostly shallow, sloping with steeper slopes confined to the banks of drainage ditches and isolated areas
- the steeper slopes upslope of Carlton on Trent are mostly earmarked for mitigation and enhancement, which would include grassland and scattered trees
- in areas where PV arrays would run parallel to a slope of 6% or greater, active measures such as berms, stone filter drains and swales would be incorporated to slow the flow of surface water run-off as part of construction SuDS, which could be retained for the operational phase of the proposed development
- the pluvial flood depths modelled for fields in the vicinity of Ossington Road were conservative

3.15.71. With regards to CTPC's comments concerning the need to ensure that SuDS would be adequately maintained, at ISH3 the applicant stated that the outline landscape and ecology management plant (oLEMP) would have provision for

the commitment to ensuring these structures would remain functional and serve their intended purpose [REP3-101]. There would be accountability and a clear mechanism for continued maintenance.

3.15.72. Pamela Gladwin and Paul Mitchell raised concerns in their RRs [RR-169, RR-174] about surface run off from fields entering and overspilling dykes along Kersall Road to the west of their property, and the potential for this floodwater to enter their garden and property. They referred to previous events where floodwater had almost entered their property during heavy rain. They considered that the nearby fields (270 and 100) proposed to be used for panels should therefore be used for vegetation, owing to the potential for surface run-off from the panels to increase the risk of flooding. Ms. Gladwin and Mr Mitchell also requested that array area W.3 be set back from the curtilage of their property, due to it being located in an area at high risk of surface water flooding.

3.15.73. The ExA visited Ms. Gladwin and Mr Mitchell's property during ARSI1 [EV1-002], and viewed the field, road and dyke of concern, adjacent to the property.

3.15.74. In response to Ms. Gladwin and Mr Mitchell's concerns the applicant stated that the risk of pluvial flooding from the proposed development was low to negligible, including for solar PV arrays that would be raised above ground [REP1-065]. The applicant also noted that a strip of land to the west of Kersall Road had been demarcated for mitigation and enhancement, which could comprise scrapes, as discussed with Ms. Gladwin and Mr Mitchell during a consultation event in January 2025. This could assist in alleviating the existing surface water run-off from fields 270 and 100, and Kersall Road, draining to the layby to the west of their property.

ExA's consideration

3.15.75. The ExA acknowledges the concerns put forward by CTPC, JPAG, and Tanya Grimes with regards to surface water flooding in the Carlton on Trent area, and accepts that recent, significant flooding events in the village of Carlton-on-Trent, as well as historical surface water flooding at Ossington Road, would give rise to concerns regarding the potential for additional run-off from solar PV panels to exacerbate the flood risk.

3.15.76. However, the ExA considers that the applicant has sufficiently demonstrated that the proposed development would not create any significant additional risk to this flooding due for reasons outlined above, and that there could even be a beneficial effect from the SuDS measures and biodiversity measures incorporated into the proposed development.

3.15.77. With regards to flooding in the vicinity of Pamela Gladwin and Paul Mitchell's property, the ExA acknowledges that recent surface water flooding events would give rise to concerns around the potential surface water run-off generated by the presence of the solar panels. The ExA agrees with the applicant that the additional risk to pluvial flooding in this area from the proposed development would be negligible, that surface run-off from the

panels would be unlikely to generate any significant additional surface water flooding, and that the SuDS measures incorporated into the proposed development could have a beneficial effect.

CONCLUSIONS

3.15.78. The ExA is satisfied that the application contains sufficient information to understand the effect of the proposed development on flood risk and that the applicant has provided a robust FRA and WFD assessment, as required under section 5.8 of EN-1 and paragraph 2.10.86 of EN-3.

3.15.79. The ExA agrees with the applicant's overall assessment that the proposed development would not have significant adverse effects on surface water quality, ground water quality or hydrogeology, and that it would not adversely affect WFD classifications in and around the Order limits. The assessment is in general conformity with the provisions set out in sections 5.8 and 5.16 of EN-1. The ExA notes that there are no outstanding matters of disagreement with statutory consultees, as confirmed in the final signed SoCGs with the EA and NCC.

3.15.80. The ExA is satisfied that the applicant has applied both the sequential test and exception test appropriately, and in conformity with section 5.8 of EN-1.

3.15.81. Overall, the ExA concludes that there would be no significant adverse effects on the water environment, and that the proposal would accord with the relevant provisions of EN-1 and EN-3.

3.15.82. The proposed development would give rise to a series of non-significant adverse effects, of negligible or low magnitude. Taking into account the mitigation measures outlined in the oCEMP, oDS, oSMP, oFSMP, and oDRP, the ExA is satisfied that the effects of the proposed development would be appropriately mitigated. They would also be in general conformity with the provisions set out in sections 5.8 and 5.16 of EN-1. The management plans would be secured under requirements 12, 10, 20, 7, and 19 of the recommended DCO (Appendix A) respectively.

3.15.83. The proposed development would also have potentially beneficial effects with regards to surface run-off and would not lead to an increase in flood risk elsewhere that could be considered to be material or significant.

3.15.84. The ExA therefore assigns neutral weight to the water environment and flood risk for the making of the Order.

3.16. MISCELLANEOUS

INTRODUCTION

3.16.1. This section considers the effects of the proposed development on air quality, glint and glare, human health, major accidents or disasters, electromagnetic fields and waste.

3.16.2. The following must be given due regard in consideration of the effects of the proposed development on air quality, glint and glare, human health, major accidents or disasters, electromagnetic fields and waste:

- the Overarching National Policy Statement (NPS) for Energy (EN-1), sections 4.4 'Health', 4.13 'Safety', 4.14 'Hazardous Substances', 5.2 'Air Quality and Emissions', 5.7 'Dust, Odour, Artificial Light, Smoke, Steam, and Insect Infestation', and 5.15 'Resource and Waste Management'
- the NPS for Renewable Energy (EN-3), section 2.10 'Solar Photovoltaic Generation' in particular paragraphs under the sub-heading 'Glint and Glare'
- the NPS for Electricity Networks Infrastructure (EN-5) sections 2.9 'Applicant Assessment', 2.10 'Mitigation', and 2.11 'Secretary of State decision making' in particular paragraphs under the sub-heading 'Electric and Magnetic Fields (EMF's)'
- any local impact report (LIR)
- any matters prescribed in relation to the development
- any other important and relevant matters

THE APPLICATION

Environmental Statement

3.16.3. The applicant sets out its assessment of the proposed development on air quality, glint and glare, human health, major accidents or disasters, electromagnetic fields and waste in its Environmental Statement (ES) Chapter 16 Miscellaneous Issues [APP-059].

Air quality

3.16.4. The applicant describes that the baseline air quality in the vicinity of the Order limits is good, with low levels of air pollution. The applicant considers the proposed activities that would take place during the construction, operation and decommissioning phases of the proposed development in the context of policy and guidance. The applicant concludes that there would be limited impact and no significant effects on air quality.

3.16.5. The applicant describes that despite this, mitigation of any adverse air quality impacts would be achieved during construction through the implementation of a construction environmental management plan (CEMP), and a construction traffic management plan (CTMP) approved by the relevant authorities. These would be based respectively on the outline Construction Environmental Management Plan (oCEMP) [REP4-017] and the outline Construction Traffic

Management Plan (oCTMP) [REP6-031] and secured in the draft Development Consent Order (dDCO) [REP6-004].

3.16.6. Similarly, mitigation of any impacts during decommissioning would be achieved through the implementation of a decommissioning and restoration plan (DRP) based on the outline Decommissioning and Restoration Plan (oDRP) [REP4-021].

Glint and glare

3.16.7. The applicant provides a technical appendix [APP-286] which supports the application and includes details of:

- methods that have been used including study areas, receptor identification, assessment criteria, assumptions and modelling parameters
- predictions of the potential for glint and glare to occur, and comparison of this with the assessment criteria
- potential mitigation measures

3.16.8. The applicant explains that it models effects from the proposed development on:

- residential properties within 200m
- roads and railways within 500m
- other and non-safeguarded aerodromes and aerodromes, including flight paths within 5km
- safeguarded civil or military aerodromes within 10km

3.16.9. The applicant identifies no potentially significant glint and glare effects on:

- the east coast main line in either direction
- the River Trent (which is outside the study area, following design changes)
- any residential property

3.16.10. The only potentially significant glint and glare effects the applicant identifies are on certain stretches of the A1 (northbound) and the A616 (northwest bound), and none in the opposite directions.

3.16.11. The applicant expects that mitigation would be required to ensure that glint and glare effects are acceptable in all cases, and its proposals include:

- modifying the extent of the photovoltaic (PV) array areas
- the use of textured glass PV panels in key areas
- additional visual screening in the form of fencing and planting
- changes to the azimuth and tilt angle of the PV arrays

3.16.12. The applicant states that a detailed glint and glare mitigation scheme would be designed to match the final PV array design in consultation with relevant stakeholders and would be submitted to Newark and Sherwood District Council (NSDC) for approval prior to construction. This is secured by schedule 2, requirement 22, of the dDCO [REP6-004].

Human health

3.16.13. The applicant states in ES Chapter 16 Miscellaneous Issues [APP-059] that the approach to human health impact assessment (HHIA) as part of an Environmental Impact Assessment (EIA) is guided by the Institute of Environmental Management and Assessment (IEMA) Guide to: Effective Scoping of Human Health in Environmental Impact Assessment (2022).

3.16.14. The applicant identifies the effects to be scoped into the HHIA of the proposed development to be:

- adverse effects from pollutant emissions leading to lower air quality, with the potential to affect physical health
- beneficial effects from the improved financial position of construction workers and how the supply chain affects their ability to afford a healthy lifestyle
- beneficial effects from the creation of additional recreational routes

3.16.15. The applicant concludes that key determinants to the protection of human health, including mental health aspects associated with changes to amenity as a result of the proposed development, have been considered as part of its HHIA. The applicant carries on to say that the HHIA indicates that the proposed development is unlikely to negatively affect people's health and wellbeing in its widest sense.

3.16.16. In particular the applicant concludes that there is nothing that would:

- cause potentially severe or irreversible negative effects
- affect a large number of people
- affect people who already suffer poor health or are socially excluded

3.16.17. The applicant concludes that neither the adverse air quality related effects, nor the beneficial socio-economic and recreational related effects are likely to be significant in EIA terms.

Major accidents or disasters and fire safety

3.16.18. The applicant states that the Health and Safety Executive (HSE) had confirmed that the Order limits were not within any HSE consultation zones. The applicant confirms that there are no hazardous substances proposed to be stored or used at or above the controlled quantities at the site of the proposed development, that would require either a hazardous substance consent or a hazardous substances planning consent.

3.16.19. The applicant considers that the proposed development would not be required to have a permit under the Control of Major Accident Hazards Regulations 2015. Any safety concerns related to any work activity would be addressed under The Health and Safety at Work, etc Act 1974. This would be supported by regulations that would require post-consent design and risk assessment to be carried out.

3.16.20. With regard to fire safety management for the battery energy storage systems (BESS), the applicant explains that a Fire Safety Management Plan (FSMP) would be submitted to Nottinghamshire County Council (NCC) for approval in consultation with Nottinghamshire Fire and Rescue Service (NFRS), and that this would ensure that there would be no likely significant effects associated with major accidents or disasters. The FSMP would be based on the outline (o)FSMP [REP1-032]. This is secured by schedule 2, requirement 7, of the dDCO [REP6-004].

Electromagnetic fields (EMF)

3.16.21. The applicant presents analysis of the likely field strengths from the proposed development compared with government guidance that supports EN-5. The predicted values are below the relevant thresholds at the nearest residential properties. The applicant concludes that no significant effects from EMF are anticipated.

Waste

3.16.22. The applicant estimates the waste arisings during each phase of the proposed development and finds that these would be by far the greatest during the decommissioning phase, around 40 years from the start of operation, which it assumes to be 2029.

3.16.23. The applicant considers that arising materials would be recycled, where this is practicable, which it expects to be entirely or almost entirely. It describes that solar panel recycling exists in 2024, despite the solar PV industry only having been substantially active in the UK for approximately 15 years, and recycling having been a waste priority for only about 35 years.

3.16.24. The applicant anticipates that by the time of the decommissioning of the proposed development, around 2070, it is highly likely that solar PV recycling will be a well-developed and active industry. The applicant expects that the metals comprising the cabling, solar PV mounting pole structures, inverters/ transformers and fencing as well as other components, including inert waste, would be recycled to at least the extent it is now.

3.16.25. The applicant assesses the effect of the decommissioning phase of the proposed development on landfill capacity as negligible, and not significant in terms of the EIA Regulations.

Cumulative effects

3.16.26. The applicant explains that its assessment of cumulative effects follows the methodology set out in ES Chapter 2 EIA [APP-045]. The potential for cumulative effects relating to air quality and glint and glare is considered.

3.16.27. The applicant explains that any change to the baseline air quality environment caused by any cumulative developments would not lead to the addition of the proposed development's negligible effects becoming material. Hence the applicant concludes that cumulative air quality and dust effects would be negligible.

3.16.28. With regard to glint and glare, the applicant considers that only one other solar farm, Muskham Wood Solar Farm, has the potential to lead to effects on four of the receptors in common with the proposed development. The applicant states that modelling shows cumulative effects at all receptors would be below the respective assessment criteria and therefore not potentially significant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.16.29. Issues were raised by interested parties (IP) as reported by the applicant in its Responses to Relevant Representations Report [REP2-115]. Concerns raised included the:

- impact of dust pollution on nearby properties
- effects of glint and glare on residential and other receptors
- reduced amenity value of the countryside that would cause psychological and physical impacts on residents
- consequences of fire at the BESS, including thermal runaway and contaminated water run-off
- effects of changes to EMF on human physical health
- toxic materials contained in solar panels would make them difficult to dispose of at decommissioning

Air quality

3.16.30. In its LIR, [REP1-075] Newark and Sherwood District Council (NSDC) concluded that it expected impacts on air quality to be neutral, taking into account the generic best practice mitigation measures outlined in the oCEMP that would later be made site-specific.

3.16.31. The Forestry Commission [RR-056] raised concerns that dust from construction could cause loss or deterioration of woodland. In response the applicant stated that the potential effects of air quality (including dust emissions) on ancient woodlands were assessed as not significant [REP2-115].

3.16.32. The applicant submitted a final signed statement of common ground (SoCG) with NSDC [REP6-042] which showed no areas of disagreement with regard to air quality.

Glint and glare

3.16.33. In the draft SoCG with National Highways (NH) [REP1-053] NH raised questions regarding the applicant's assessment of road receptors and requested that any glint and glare assessment for a phase which results in potential glint and glare effects on the strategic road network (SRN) be approved by NH.

3.16.34. In the final signed SoCG with NH [REP6-044] the applicant considered that it would be appropriate to name NH as a consultee, with NCC remaining the approving authority. This matter remained unresolved.

3.16.35. NH made a final submission [REP6-076] in which it stated that the matter of glint and glare had perhaps more so than the other points discussed in its position statement, the potential to directly impact the safety of the travelling public.

3.16.36. NH considered that it should have a secure and effective approval over the extent of the information submitted by the applicant to address the specific impacts on its network where such matters go directly to public safety. NH proposed alternative wording for requirement 22 of the dDCO based on what it considered relevant precedent [REP6-076].

Human health, major accidents or disasters and EMFs

3.16.37. The Joint Parishes Action Group (JPAG) [RR-101] raised concerns about the impacts on health and wellbeing and sought justification of the impacts. It considered that battery malfunction should be assessed and be scoped into the ES under the heading of public health.

3.16.38. The Council for the Protection of Rural England (CPRE) Nottinghamshire [RR-038] raised concerns around the health and well-being impact of inverter noise impacting the tranquillity of the countryside, the risk of thermal runaway of BESSs resulting in toxic fumes and contaminated run-off.

3.16.39. The UK Health Security Agency [RR-220] having reviewed the application said that it was satisfied that the proposed development should not result in any significant adverse impact on public health.

3.16.40. In its response [REP2-115] the applicant considered that potential effects in relation to human health, safety and security have been assessed and appropriate measures would be provided to promote improvements to encourage health and wellbeing. In particular the applicant pointed to its HHIA, which it said has considered the interrelationships of impacts informed by the wider effects from landscape and visual, flood risk, noise, and highway safety.

3.16.41. In response to general concerns about human health, safety and the risk of major accidents or disasters [REP2-115] the applicant explained that the BESS would be carefully sited away from residential properties. This included the nearest receptors to the BESS unit which would be located at Flash Farm and Kelham, approximately 550m and 750m away, respectively. The applicant responded with reference to its ES Chapter 16 Miscellaneous Issues [APP-059] and the supporting application documents referenced therein.

3.16.42. Norwell Solar Farm Steering Group (NSFSG) [RR-164] compared the applicant's assumptions with regard to dealing with a BESS fire and the possibility of thermal runaway with the incident on 19 February 2025 at the smaller Stratera BESS facility in Essex. In this incident 23 fire appliances were sent and contaminated fire water remained on site more than 4 months after the event. It concluded that the BESS should not be allowed because

the applicant had failed to demonstrate the capability to deploy a number of tankers in sufficient time to remove contaminated fire water run-off.

3.16.43. The applicant's response [REP2-115] included that the FSMP would place a priority on early detection and prevention of thermal runaway and explosion. It went on to explain that before the construction of the relevant works the full and final FSMP would be developed in agreement with NCC in consultation with and approval by the NFRS and the Environment Agency (EA).

3.16.44. In response to the Examining Authority's (ExA) second written questions (ExQ2) Q2.2.12 [REP4-063], NCC confirmed that it had consulted with the NFRS and the NFRS had confirmed that it was satisfied with the wording of requirement 7 (Fire Safety Management Plan) and the content of the oFSMP [REP3-038], and no amendments were proposed.

3.16.45. NSFSG made a final submission [REP6-073] including its concerns over the consequences of a BESS fire.

3.16.46. The applicant submitted final signed SoCGs with NCC [REP6-040] and NFRS [REP6-063], showing no areas of disagreement between the parties on matters in relation to the fire safety management of the BESS.

Waste

3.16.47. In response to concerns about waste the applicant explained that outline site waste management plans would secure waste management controls for the construction, operation and decommissioning phases of the proposed development. These are contained within the oCEMP [REP4-017], the outline Operational Environmental Management Plan (oOEMP) [REP6-035] and the oDRP [REP4-021]. Each of these would be secured via a dDCO requirement.

3.16.48. In its LIR [REP1-078] NCC considered that the applicant should have assessed the cumulative impact of the proposed development on landfill with other similar schemes in the area. NCC concluded that the impact on waste management was still uncertain, pending completion of further assessment work. Hence NCC considered that the proposed development had the potential to cause a negative impact upon future landfill capacity, if capacity to enable the recovery and recycling of solar panels does not develop.

3.16.49. In its final signed SoCG with NCC [REP6-040] the applicant set out that the oOEMP has a new section on waste which includes a commitment to 5-yearly reporting to NCC setting out the anticipated waste streams over the following 5-year period (types, volumes and weights) and how and where that waste is expected to be disposed. NCC considered that this would help mitigate the risk that capacity to recycle solar panels is not developed and that it responds to the concerns raised by NCC regarding landfill capacity. There remained no areas of disagreement between the parties on this issue.

ExA's considerations

3.16.50. With the exception of the potential for glint and glare to affect users of the SRN, the ExA finds the applicant's responses to representations satisfactory. The other concerns raised were not supported by evidence that cause the ExA to doubt the applicant's approach to assessment or its conclusions, having accounted for its proposed mitigation measures and how they would be secured within the dDCO.

3.16.51. With regard to the generic impacts of power generation covered under EN-1 sections 4.4, 4.13, 5.2, 5.7 and 5.15 the ExA considers that the application is consistent with these. In reaching this position the ExA accounts for the consideration of potential sources of public health and safety impacts that are covered in more detail elsewhere in this recommendation report, for example noise and vibration in section 3.11 and traffic and transport in section 3.14.

3.16.52. The ExA considers that with regard to safety, including major accidents or disasters, and hazardous substances, it may assume that existing regulation is effective in reducing risk to an acceptable level, as described in EN-1 section 4.12. With regard to EN-1 sections 5.2, 5.7 and 5.15 the ExA gives weight to relevant matters being resolved between the applicant and NFRS, the applicant and NSDC and the applicant and NCC, as set out in the final signed SoCGs with these parties.

3.16.53. The ExA finds no reason to disagree with the applicant that the proposed development would be consistent with the relevant paragraphs of EN-5 with regard to EMFs.

3.16.54. The ExA finds that the measures the applicant would expect to use to mitigate glint and glare would be consistent with the measures set out in EN-3 at paragraphs 2.10.134 to 2.10.136.

3.16.55. However, the ExA finds consistency between the concerns raised by NH regarding the potential effects of glint and glare on the SRN and the applicant's assessment that there would be a potentially significant effect on certain stretches of the A1 northbound.

3.16.56. Whilst the discharge of a DCO requirement by a local body in consultation with a national body is well precedented, given the nature and context of the risk the ExA accepts NH's proposed amendment to requirement 22 of the dDCO to name NH as an approver. This is taken forward to chapter 7 of this recommendation report.

CONCLUSIONS

3.16.57. In conclusion, based on the ExA's recommended DCO at Appendix A which includes NH's proposed amendment to requirement 22, the ExA assigns neutral weight to the issue with regard to the making of the Order. In the absence of this amendment the ExA would assign a little weight against the making of the Order.

4. HRA SUMMARY

4.1. INTRODUCTION

4.1.1. This chapter sets out the Examining Authority's (ExA) summary conclusions relevant to habitats regulations assessment (HRA). This will assist the Secretary of State Energy Security and Net Zero (SoS), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

4.1.2. This chapter is structured as follows:

- section 2: findings in relation to Likely Significant Effects (LSE) on the UK National Site Network and other European sites
- section 3: conservation objectives for sites and features
- section 4: findings in relation to Adverse Effects on Integrity (AEoI)
- section 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 will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

4.1.4. For the purposes of this recommendation, in line with the Habitats Regulations and relevant government policy, the term 'European sites', includes special areas of conservation (SACs), candidate SACs, proposed SACs, special protection areas (SPAs), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

4.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in chapter 2 of this recommendation report.

4.1.6. The ExA has been mindful throughout the examination of the need to ensure that the SoS has the information reasonably required to carry out their duties as the competent authority. It has sought evidence from the applicant and relevant interested parties (IP), including from Natural England (NE) as the appropriate nature conservation body (ANCB), through written questions and issue-specific hearings (ISH).

Report on the Implications for European Sites and Consultation

4.1.7. 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 development consent order (DCO) application and examination representations up to deadline (D)3 (18 February 2026). The RIES was issued to set out ExA understanding on HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time.

4.1.8. Consultation on the RIES took place between 04 March 2026 and 25 March 2026. Comments were received from NE [REP4-069] at D4 (25 March 2026). These comments have been taken into account in the drafting of this chapter.

4.1.9. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under regulation 63(3) of The Habitats Regulations should the SoS wish to do so.

4.1.10. The HRA Report refers to Environmental Statement (ES) Appendix 8.1 (Vol 4) [APP-214] which details the consultation undertaken in relation to HRA matters and how this has informed the HRA Report methodology. Consultation is also detailed in the accompanying consultation report [APP-296] and appendices.

Proposed development description and HRA Implications

4.1.11. The proposed development is described in chapter 1 of this recommendation report.

4.1.12. The spatial relationship between the Order limits of the proposed development and European sites (with the exception of the Humber Estuary SAC/ Ramsar site) is shown on figure A8.2.1 of the accompanying designated sites baseline report [APP-215].

4.1.13. 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' (AA) of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

Applicant's Assessment

4.1.14. The applicant's assessment of effects is presented in the following application document(s):

- Habitats Regulations Assessment Screening Report [APP-316], updated as [AS-020]
- at D2 [REP2-015], the applicant amended the report title from Habitats Regulations Assessment Screening Report to Shadow Habitats Regulations Assessment to reflect a change in methodology and identification of LSE as detailed below

Transboundary

4.1.15. The applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) states in its HRA Report [APP-316] or within its ES chapters [APP-044] – [APP-062]. The Transboundary Screening published by the Planning Inspectorate on behalf of the SoS [OD-001] also did not identify any LSE on non-UK European sites.

4.1.16. Only UK European sites are addressed in this recommendation. No transboundary impacts were raised for discussion by any IPs during the examination.

Summary of HRA matters considered during the examination

4.1.17. The main HRA matters raised by the ExA and other IPs and discussed during the examination include IPs agreement with the conclusions of the HRA Report. These matters are discussed in the sections below, as appropriate.

4.1.18. Matters which were undisputed by IPs, including NE as the ANCB were:

- NE agreed with the screening area and identification of European sites required to be assessed ([RR-154], NE1)
- NE agreed with the conclusions of no LSE in relation to impacts to functionally linked land ([RR-154], NE2), hydrological connectivity ([RR-154], NE3), air quality ([RR-154], NE4) and in combination effects ([RR-154], NE5) for all sites screened into the assessment
- NEs agreement was also confirmed in its risk and issues log [REP1-084] and statement of common ground (SoCG) with the applicant [REP1-055], most recently the final signed SoCG [REP6-048].

4.1.19. These matters are set out in the RIES [PD-012].

4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

4.2.1. Under regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.

4.2.2. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in table 1 of the HRA Report [REP2-015]. The applicant's scoping exercise, as detailed in section 2.2 of [REP2-015], considers European sites within 30km in order to consider potential impacts on highly mobile receptors. Additionally, the HRA report states that the Environment Agency requested that the Humber Estuary SAC/ Ramsar site be scoped in due to a potential functional (hydrological) linkage, via the River Trent and its tributaries, for lamprey. The sites and qualifying features scoped into the assessment were:

- Birklands and Bilhaugh SAC: Old acidophilous oak woods with Quercus robur on sandy plains
- Sherwood Forest possible potential (pp)SPA: Breeding populations of nightjar and woodlark
- Humber Estuary SAC: Sea lamprey and river lamprey
- Humber Estuary Ramsar site: Ramsar criterion 8 - The Humber Estuary acts as an important migration route for both river lamprey and sea lamprey between coastal waters and their spawning areas.

4.2.3. The applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect' within its HRA Report [REP2-015].

LSE from the proposed development Alone

4.2.4. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in section 3 of the HRA Report [REP2-015].

4.2.5. The impacts considered by the applicant to have the potential to result in LSE are:

- hydrological linkage: All sites
- impacts to Functionally Linked Land (FLL): Birklands and Bilhaugh SAC and Sherwood Forest ppSPA
- air pollution: Birklands and Bilhaugh SAC and Sherwood Forest ppSPA
- In combination effects: All sites

4.2.6. The ExA considers that the potential impact pathways identified by the applicant are appropriate.

4.2.7. The applicant's HRA Report concluded no LSE from the proposed development alone on any of the qualifying features of:

- Birklands and Bilhaugh SAC
- Sherwood Forest ppSPA

4.2.8. Neither ANCB, nor other IPs, raised concerns in relation to the applicant's conclusions for the Birklands and Bilhaugh SAC.

4.2.9. Having considered the available evidence, the ExA is satisfied that there would be no LSE from the proposed development on Birklands and Bilhaugh SAC or Sherwood Forest ppSPA.

EXAMINATION MATTERS

Sherwood Forest ppSPA - Position of Nottinghamshire County Council and Newark and Sherwood District Council

4.2.10. The ExA sought clarity in the RIES ([PD-012], Q1) from Nottinghamshire County Council (NCC) and Newark and Sherwood District Council (NDSC) as to whether they had any comments on the HRA Report conclusions, as a minor discrepancy was noted between the Local Impact Reports [REP1-075] [REP1-078] and accompanying SoCGs [REP1-050, REP1-051]. However, no specific comment was received from either NCC or NSDC, and the matters were noted to be agreed in the final signed versions of the SOCG [REP6-040, REP6-042].

Humber Estuary SAC and Ramsar site - Applicant approach to mitigation measures

4.2.11. Whilst the response to first written question (ExQ1) Q4.1.10 [PD-008] confirmed NE's agreement with the applicant's approach, at D2 the applicant

provided an amended HRA report [REP2-015] which advanced the lamprey qualifying features of the Humber Estuary SAC and Ramsar site to an assessment of AEoI. The applicant confirmed [REP3-101] that this was undertaken on a precautionary basis to avoid any implication that mitigation measures had been taken into account at the screening stage (para 1.5.36).

Minor methodological queries

4.2.12. The ExA also sought some minor clarification from the applicant and NE at first written questions [PD-008]:

- Q4.1.9: NE confirmed [REP2-127] that it did not consider that there were any credible impact pathways to other qualifying features of the Humber Estuary SAC and Ramsar site that were not included in the HRA report, and that there was no requirement to assess potential LSE to the Humber Estuary SPA
- Q4.1.10: NE confirmed [REP2-127] that additional mitigation had not been considered at the screening stage. Agreement on this was also provided by the Environment Agency [REP2-125]
- Q4.1.11: The applicant provided confirmation of how it had applied relevant case law [REP2-117].

HRA screening process

4.2.13. Carlton on Trent Parish Council challenged the robustness of the stage 1 HRA screening process undertaken by the applicant, considering that the baseline risk associated with the proposed development was not assessed [REP2-118].

4.2.14. In response [REP3-098] the applicant noted that it had provided a shadow HRA report [REP2-015] which assessed potential adverse effects on qualifying features before identifying a range of suitable mitigation measures.

LSE from the proposed development in combination

4.2.15. The applicant addressed potential in-combination effects arising from the proposed development within [REP2-015] which sets out the methodology applied.

4.2.16. The cumulative assessment in section 8.9 of accompanying ES Chapter 8 [APP-051] identified only one other development, the A46 Bypass, which had scoped fish and the Humber Estuary SAC into its assessment of effects.

4.2.17. During the course of the examination, the applicant updated the in-combination assessment [REP2-015] to include One Earth Solar Farm which had also considered this impact pathway.

4.2.18. Where the applicant's screening exercise established the potential for LSE to

4.3. CONSERVATION OBJECTIVES

4.3.1. The conservation objectives for the sites and features identified above are set out in Table 1 of the applicant's HRA Report [REP2-015].

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

4.4.1. The European sites and qualifying features identified in section 4.3 above were further assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [REP2-015].

4.4.2. The ExA sought clarity in the RIES ([PD-012], Q2) from the applicant as to the condition status of the Humber Estuary SAC (and subsequently Ramsar site) and how this had been considered within the assessment of AEoI. Whilst no specific answer to this was provided, the ExA noted NEs agreement [REP4-069] [REP6-048] with the conclusions of the HRA Report.

4.4.3. The applicant's HRA Report identified mitigation measures in section 4 [REP2-015]. These were taken into account in the applicant's assessment of effects on integrity.

4.4.4. The ExA is satisfied, based on the information provided, that the correct impacts were assessed. This section discusses the conclusions with respect to AEoI for each site.

In combination assessment

4.4.5. The applicant's approach to the in-combination assessment is set out in section 4.1 of the HRA report [REP2-015].

4.4.6. Based on the findings of the examination, the ExA is satisfied that the assessment of AEoI from the proposed development in combination with other plans or projects was based on this information and that no other plans or projects were required to be taken into account.

Sites for which the applicant concluded AEoI can be excluded

4.4.7. The applicant's HRA Report [REP2-015] concludes that the proposed development would not result in AEoI on the following European sites:

- Humber Estuary SAC
- Humber Estuary Ramsar site

4.4.8. Neither ANCB, nor other IPs, raised concerns in relation to the applicant's conclusions for these sites and features.

4.4.9. The ExA sought clarity in the RIES ([PD-012], Q3) from NE to confirm agreement with the conclusions of the HRA Report. NE confirmed agreement with all conclusions [REP4-069] [REP6-048].

4.4.10. The ExA is satisfied on the basis of the information above that AEoI on all these sites and their qualifying features can be excluded from the assessment.

AEoI Assessment Outcomes - summary

Proposed development alone and in combination

4.4.11. The applicant's HRA Report concludes that subject to the mitigation measures to be secured in the dDCO, AEoI can be excluded on the Humber Estuary SAC and Ramsar site from the proposed development alone, or in-combination with other plans and projects. These conclusions were agreed with NE [REP4-069] [REP6-048].

4.4.12. Based on the findings of the examination, the ExA is satisfied that AEoI on all qualifying features of European sites can be excluded from the proposed development alone and in-combination with other plans or projects.

4.5. HRA CONCLUSIONS

4.5.1. The purpose of 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.

4.5.2. Four of the European sites and their qualifying features were considered in the applicant's assessment of LSE:

- Birklands and Bilhaugh SAC
- Sherwood Forest ppSPA
- Humber Estuary SAC
- Humber Estuary Ramsar site

4.5.3. LSE were identified for the lamprey qualifying features of the Humber Estuary SAC and Ramsar site, both from the proposed development alone and in-combination with other plans or projects.

4.5.4. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny during the examination. However, the sites and features for which LSE were identified were not disputed by any IP.

4.5.5. 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.

4.5.6. The ExA's findings are that, subject to the mitigation measures secured in the recommended DCO, AEoI on the Humber Estuary SAC and Ramsar site from the proposed development, when considered alone or in-combination with other plans or projects, can be excluded from the impact-effect pathways assessed.

4.5.7. 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 sets out the Examining Authority's (ExA) overall assessment of the planning merits of the proposed development. This is undertaken in the light of the legal and policy context set out in chapter 2 and the legal and policy requirements relevant to particular topics, as set out in chapter 3 and chapter 4 of this recommendation report.

5.1.2. In reaching these conclusions the ExA has taken into account the local impact reports (LIR), all relevant representations (RR), all written representations (WR) responses to written questions and all other representations made during the course of the examinations, including those made at hearings.

5.1.3. The ExA is satisfied that the applicant's Environmental Statement (ES) has provided sufficient information to enable the Secretary of State for Energy Security and Net Zero (SoS) to understand the environmental effects of the proposed development over its operational life of up to 40 years.

5.1.4. Consideration has been given to the adequacy of the ES and the matters arising from it, including the measures proposed to mitigate the significant effects identified by the applicant. Noting that various updates were made to the ES during the examination, the ExA does not consider these individually or cumulatively to undermine the scope and assessment of the ES.

5.1.5. Overall, the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to take a decision in compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).

5.1.6. The Overarching National Policy Statement (NPS) for Energy (EN-1), the NSP for Renewable Energy Infrastructure (EN-3) and the NPS for Electricity Networks Infrastructure (EN-5) provide the primary basis for the SoS decision-making for such applications. On 6 January 2026 the 2024 versions of EN-1, EN-3 and EN-5 were replaced by revised versions. However, in accordance with transitional arrangements, the 2024 versions of EN-1, EN-3 and EN-5 remain the effective NPS's for the purposes of the assessment of this application. The ExA's conclusions on the case for development consent are therefore reached within the context of the policies contained in these NPSs. In arriving at the conclusions set out in this chapter, the ExA has taken all other relevant law and policy into account.

5.1.7. The ExA's conclusions on the main planning issues are set out below, with reference to the ExA's recommended development consent order (rDCO) (Appendix A).

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

Need and alternatives

5.2.1. The proposed development would contribute to meeting the urgent need for solar generation established by EN-1 and EN-3. It would help in the transition to a low carbon system, would contribute to a more secure energy system and would generally be in accordance with EN-1, EN-3 and EN-5. It would also be in general accordance with the National Planning Policy Framework (NPPF) and local policy, all of which give support for the principle of low carbon generation.

5.2.2. The Battery Energy Storage System (BESS) would support energy balancing and optimising grid capacity and capability, thereby increasing reliability and reducing costs, as recognised and supported by the NPS.

5.2.3. In terms of the consideration of alternatives, the application contains sufficient detail, including the approach to the grid connection, the scale of the proposed development and different technologies, to meet the requirements of the NPSs and the EIA Regulations.

5.2.4. Overall, the contribution of the proposed development to meeting the urgent need for a secure supply of renewable energy, thereby supporting the UK's legal obligations to achieve net zero by 2050, carries very great/ substantial weight in favour of making the Order.

Site selection and design

5.2.5. An infrastructure development of this scale and nature would inevitably have far reaching effects on the environment. Noting the provisions of EN-1 in relation to good design, the design principles set out by the applicant display an effort to embrace a holistic approach, seeking to balance functionality alongside aesthetics and sensitivity to place. Whilst the site selection process was clearly driven by the grid connection point and various physical and environmental constraints, the subsequent iterative approach to design refinement demonstrates an attempt to follow these principles.

5.2.6. It is reasonable that the applicant should seek approval for design within parameter ranges due to the rapid pace of technological advancement in both the solar photovoltaics and energy storage system sectors. Such flexibility would enable the use of the most up-to-date technology. This is recognised within EN-1, on the basis that the ES considers the worst-case impacts.

5.2.7. At the post-approval stage, the provisions of the rDCO schedule 2 requirements relating to detailed design control, requirement 6, and the implementation of the landscape and ecology management plan and biodiversity design strategy, requirement 8, would support the delivery of a well-designed scheme, including the management and mitigation of harmful effects.

5.2.8. Overall, in terms of the approach to site selection and design matters, the applicant has demonstrated compliance with the principles set out in EN-1 and EN-3. This matter therefore carries neutral weight in the planning balance.

Agricultural land

5.2.9. The applicant's assessment of the effects of the proposed development on agricultural land, both individually and cumulatively with other developments, is adequate. The approach to site selection is suitable, noting that the applicant has made appropriate use of the Ministry of Agriculture, Fisheries, and Food maps, in combination with undertaking its own field surveys, both in order to inform site selection and undertake micro siting where appropriate. In this regard, the provisions for assessment set out in EN-3 have been met.

5.2.10. The applicant has demonstrated that they have sought to avoid best and most versatile (BMV) land when establishing the Order limits. Also, the mitigation hierarchy has been applied to avoid effects where possible.

5.2.11. The mitigation and control measures for the handling of soils set out in the outline soil management plan (oSMP) would be appropriate and would provide for measures to minimise disturbance to soils during construction, with disturbed soils restored to the same quality after construction. The oSMP is a document certified at schedule 11 and secured through requirement 20 of the rDCO.

5.2.12. Overall therefore, the proposed development would be in general accordance with the provisions set out in section 5.11 of EN-1, and section 2.10 of EN-3 in relation to effects on agricultural land and soils as a resource, and the effects on associated economic activity.

5.2.13. Nonetheless, the proposed development would be located on a total of 1,093 ha of BMV land, which would be unavailable for the 40-year operation of the proposed development. Whilst this loss would be temporary and reversible, and the subsequent economic and nationwide food-production impacts would be likely to be minimal, this represents a large quantity of BMV land which would not be available for agricultural purposes. Whilst sheep grazing would be encouraged as an agricultural use, there would be a loss of flexibility with regards to the land, and this would have a negative overall effect. This could have been acknowledged in the applicant's assessment of effects on farm businesses, notwithstanding that it would be unlikely to change the conclusions therein.

5.2.14. Whilst the applicant's assessment of the cumulative effects of the proposed development is adequate, when considered locally, the cumulative loss of BMV land would represent a large quantity of land not available for agricultural uses. This would have a negative effect which could have been more clearly described in the applicant's assessment.

5.2.15. As initially assessed by the applicant, 4.5ha of BMV land within the Order limits would be permanently lost. However, a further 22.4ha of this land

would be permanently lost due to the woodland planting required for biodiversity mitigation and enhancement, leading to a total of 27.9ha of BMV land permanently lost. Following the methodology and logic of the applicant's assessment, and as advised by the applicant itself, this would mean a major and significant adverse effect.

5.2.16. For these reasons, agricultural land matters are attributed moderate negative weight against the Order being made.

Biodiversity and ecology

5.2.17. The applicant's assessment includes adequate information to understand the potential effects of the proposed development, both alone and cumulatively. It therefore accords with sections 4.3, 4.6 and 5.4 of EN-1. The applicant's assessment of effects to ecological and biodiversity receptors has been undertaken in accordance with the provisions of section 2.10 of EN-3.

5.2.18. The provisions of the outline landscape and ecological management plan (oLEMP) set out that the proposed development would result in a biodiversity net gain (BNG) increase of at least 40% in area-based habitat units, at least 17% in hedgerow units, and at least 10% in watercourse units. This would be secured through the landscape and ecological management plan and biodiversity design strategy provisions of requirement 8 of the rDCO. Therefore, the applicant has paid adequate regard to the Environment Act.

5.2.19. Whilst acknowledging that there would be non-significant adverse impacts on some habitats and animals during construction and decommissioning, these would be temporary and reversible. Adequate mitigation measures would be put in place during the operational phase to ensure that there would be no significant residual effects. The applicant has also sufficiently considered mitigation measures and the mitigation hierarchy. The enhancement elements of the oLEMP would be delivered to compliment the mitigation elements.

5.2.20. In this regard any identified effects, either for the proposed development alone or cumulatively, on ecology and biodiversity would be satisfactorily mitigated and managed through the proposed implementation of the oLEMP, the outline construction environmental management plan (oCEMP), the outline operational environmental management plan (oOEMP) and the outline decommissioning and restoration plan (oDRP). These management plans would be certified in schedule 11 of the rDCO. They would then be secured through requirements 8, requirement 12, requirement 13 and requirement 19 of the rDCO respectively.

5.2.21. Biodiversity and ecology matters have therefore been adequately assessed in accordance with the requirements of EN-1 and EN-3 and the NPPF. The applicant has made a commitment to providing enhancement measures and minimum levels of BNG would be secured in the rDCO. This weighs positively in favour of the proposed development which should be afforded moderate positive weight in the overall planning balance.

Climate change

5.2.22. The application is consistent with the requirements set out at EN-1 section 4.10 regarding resilience to climate change.

5.2.23. The application is consistent with the detailed requirements set out at EN-1 section 5.3 in terms of the approach to the assessment and mitigation of greenhouse gas emissions (GHG), recognising the potential to take further mitigation measures during the construction of the proposed development.

5.2.24. The application is consistent with the assessment principle of 'reasonable worst case' effects as set out at EN-1 paragraph 4.3.12.

5.2.25. Therefore, neutral weight has been assigned to this issue for the making of the Order.

Cultural heritage and archaeology

5.2.26. The evidence set out in the ES complies with the requirements of EN-1 section 5.9, and EN-3 section 2.8, by providing a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance, with a level of detail proportionate to the importance of these heritage assets. The applicant has undertaken adequate desk-based and field-based survey work to determine the potential to encounter known and unknown archaeological assets. It has applied the mitigation hierarchy and proposed suitable mitigations.

5.2.27. The proposed development would not lead to the substantial harm or total loss of significance of any designated heritage asset, as defined in EN-1. Any indirect effects on the settings of heritage assets would have no more than negligible effects.

5.2.28. Any residual harm to identified archaeological assets would be negligible. This would be managed through requirement 11 of the rDCO, which would ensure that each phase of the proposed development would be carried out in accordance with an agreed written scheme of investigation, whose details must be substantially in accordance with the outline archaeological mitigation strategy, a certified document listed in schedule 11 of the rDCO.

5.2.29. The ExA also identified up to a moderate level of harm to the setting of Ossington Airfield, a non-designated heritage asset (NDHA).

5.2.30. Paragraph 5.9.28 of EN-1 states that considerable importance and weight should be given to the desirability of preserving all heritage assets. Paragraph 5.9.36 sets out that when considering the settings of designated heritage assets, appropriate weight should be given to the desirability of preserving the settings of such assets. Paragraph 5.9.33 also sets out that any impacts on NDHAs should be subject to a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset. The heritage balance is set out below.

Cumulative effects

5.2.31. The applicant's methodology for the assessment of cumulative effects is robust and in accordance with the Planning Inspectorate Advice on Cumulative Effects Assessments. This conclusion has been reached having considered the concerns of interested parties that insufficient attention has been paid to planned developments, noting that during the examination the applicant has continued to monitor the possibility that further developments would lead to cumulative effects. This includes other solar developments that are at various stages of planning and implementation.

5.2.32. Inter-related effects have also been adequately assessed. The potential inter-related effects on local people for all phases of the proposed development would be in almost all cases negligible and, as a worst-case, minor.

5.2.33. Based on these conclusions this issue has been given a little adverse weight in the planning balance.

Ground conditions and land contamination

5.2.34. In terms of the effects of the proposed development on ground conditions and contaminated land, the applicant has undertaken preliminary risk assessments, the findings of which demonstrate that the site is suitable for its intended use and that risks have been adequately assessed and mitigated. The rDCO makes adequate provision for the remediation of risks associated with land contamination at schedule 2 requirement 16.

5.2.35. The applicant has therefore demonstrated compliance with EN-1 paragraph 5.11.5 and 5.11.17. There is also consistency with EN-1 paragraph 5.4.17 and EN-3 section 2.10 as the applicant has demonstrated that there are no geological conservation sites within the Order limits following a review of designated and non-designated geological conservation sites.

5.2.36. Therefore, neutral weight has been assigned to this issue for the making of the Order.

Landscape and visual

5.2.37. Overall the applicant's landscape and visual impact assessment (LVIA) has adopted a robust methodology and has given adequate consideration to landscape and visual effects, including cumulative effects. Appropriate consideration has also been given to residential visual amenity. In these regards the LVIA meets the requirements for the assessment of landscape and visual effects set out in relevant policy and guidance.

5.2.38. The conclusions of the applicant's LVIA are that the proposed development would result in significant adverse residual landscape and visual effects during construction and early operation, and also during operation and decommissioning for the host landscape character type. The LVIA recognises that locally characteristic rural views of villages separated by gently undulating arable fields bordered by hedges would change to include

close views of solar panels and other infrastructure, including intermediate substations.

5.2.39. Of the 11 main visual receptor groups identified, six of these would be subject to significant adverse residual landscape and visual effects during construction and early operation and during operation and decommissioning. For most of these groups the effects would reduce slightly in scale and/ or extent as a result of the maturation of mitigation planting, particularly for road users. Nonetheless, large scale changes to views from routes which pass through panel areas as a result of diversions, or the enclosure of currently open views by hedges, would continue to give rise to significant effects during operation. After decommissioning there would be no significant landscape effects, though for public rights of way (PRoW) relating to visual receptor Group F (between Carlton-on-Trent, Ossington, Cromwell and Norwell) the diversion of and enclosure of footpaths would continue to give rise to significant adverse effects.

5.2.40. These conclusions are reached bearing in mind the mitigation measures that would be secured via the oLEMP at requirement 8 of the rDCO, and also the outline recreational routes management plan (oRRMP), a certified document at schedule 11 of the rDCO. This would be secured by requirement 18 of the rDCO.

5.2.41. On landscape and visual matters Newark and Sherwood District Council's (NSDC) Allocations and Development Management DPD Policy DM4 sets out that planning permission will be granted for low carbon energy generation development, where its benefits are not outweighed by detrimental impacts upon a range of elements including landscape character. Such considerations are important and relevant but must also be seen with in the context of EN-1 provisions which make it clear that all proposed energy infrastructure is likely to have landscape and visual effects.

5.2.42. Overall, notwithstanding the mitigation measures that would be employed, a notable range of significant residual landscape and visual effects would be experienced for many years to come. These are matters which must count against the proposed development, such that this has been afforded great negative weight in the planning balance.

Noise and vibration

5.2.43. 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. Significant noise and vibration effects during operation, construction or decommissioning would be unlikely when considered in terms of the EIA Regulations.

5.2.44. With regard to EN-1 paragraph 5.12.17, significant adverse impacts on health and quality of life from noise would be avoided during all phases of the proposed development, taking into account the applicant's proposed mitigation measures as would be secured in the rDCO.

5.2.45. During the operation of the proposed development the provisions of the rDCO, including the noise limit set out at requirement 15(4), would avoid operational noise causing other, less than significant, adverse effects on health and quality of life.

5.2.46. Mitigation and minimisation of significant effects would be achieved through implementation of a construction environmental management plan based on the oCEMP and secured by requirement 12 of the rDCO. However, other less than significant adverse impacts on health and quality of life from noise might be experienced by occupants of those dwellings identified by the applicant as likely to be exposed above its medium effect threshold during construction.

5.2.47. For this reason, a little negative weight has been assigned to this issue against the making of the Order.

Recreation

5.2.48. The applicant's assessment of the effects of the proposed development on recreation, including public rights of way (PRoW), is adequate and meets the requirements of EN-1 section 5.11 and EN-3 paragraphs 2.10.40 to 2.10.45.

5.2.49. The mitigation of adverse effects on identified recreational receptors, principally the PRoW users, would be the subject of a recreational routes management plan. This would be based on the oRRMP, which would be secured via requirement 18 of the rDCO.

5.2.50. The conclusion of the applicant's assessment that the permissive circular recreational route would have a significant beneficial effect on recreation is not supported by any independent assessment. Notwithstanding this point, the provision of permissive paths to the extent proposed does weigh in favour of the proposed development.

5.2.51. The applicant's refusal to be bound to restore the historic alignment of PRoWs because this would run contrary to efficient farming is not relevant to the subject of recreation. Hence, in this regard, the applicant's position weighs against the proposed development.

5.2.52. Overall, neutral weight has been assigned to this issue.

Socio-economic

5.2.53. The proposed development would deliver a significant beneficial effect on jobs and the local economy during the construction period. This would be achieved via the implementation of a skills, supply chain and employment plan, secured via requirement 17 of the rDCO.

5.2.54. However, such benefits would be counter balanced, at least to some extent, by minor adverse effects on agricultural output and tourism spending in the local economy during the operation of the proposed development, which the applicant does not consider significant in EIA terms. Overall, the net socio-economic effects during construction weigh in favour of the proposed development and in this regard there is consistency with EN-1 section 5.13.

5.2.55. The applicant claims that there would be significant socio-economic benefits during the operational phase. However, as noted by EN-1 paragraph 5.13.10, limited weight may be given to such assertions given the urgent need for energy infrastructure. Any benefit in this regard is already accounted for in the substantial weight given to need in section 3.2 of this recommendation report.

5.2.56. On this matter a little weight in favour of the making of the Order is therefore given.

Traffic and transport

5.2.57. The applicant has carried out an adequate assessment of traffic and transport matters. The traffic and transport effects of the proposed development would be managed during the construction phase by the implementation of the outline construction transport management plan (oCTMP), which would be secured by requirement 12 of the rDCO. The effects of operational traffic would be negligible because the traffic volumes would be so low.

5.2.58. With regard to traffic management overall, the applicant's approach is consistent with other made Orders and consistent with EN-1 section 5.1.4.

5.2.59. However, the applicant's reluctance to make permanent all passing places proposed on relevant sections of the construction traffic route to enable the safe passing of two vehicles is somewhat at odds with the provisions of EN-3 paragraph 2.10.144. This provision recognises the potential value of passing places for future solar development in the same area. This matter therefore weighs slightly against the proposed development. In addition, the applicant predicts that despite the controls that would be secured in the rDCO, minor adverse effects in relation to traffic and transport would still be likely.

5.2.60. In conclusion on this matter, a little weight against the making of the Order is applied.

Water environment and flood risk

5.2.61. The application contains sufficient information to understand the effect of the proposed development on flood risk and the applicant has provided a robust flood risk assessment (FRA) and water framework directive (WFD) assessment, as required under section 5.8 of EN-1 and paragraph 2.10.76 of EN-3.

5.2.62. The climate change allowances used in the FRA are appropriate, and the impact on climate change has been appropriately considered. The FRA has also considered surface drainage from the panels. It is therefore consistent with the assessment provisions set out in paragraph 5.8.15 of EN-1 and paragraph 2.10.84 of EN-3.

5.2.63. The conclusions of the applicant's assessment of the water resources overall are robust, noting that the proposed development would not have significant adverse effects on surface water quality, ground water quality or

hydrogeology, and that it would not adversely affect WFD classifications in and around the Order limits. The proposed development would not lead to an increase in flood risk elsewhere that could be considered to be material or significant. The assessment is in general conformity with the provisions set out in sections 5.8 and 5.16 of EN-1.

5.2.64. These conclusions take into account the mitigation measures outlined in the FRA, oCEMP, oDRP, oSMP and the outline fire safety management plan (oFSMP). These management plans are certified documents under schedule 11 of the rDCO, and would be secured under requirements 10, 12, 19, 20 and 7 of the rDCO respectively**.**

5.2.65. The proposed development would give rise to some non-significant adverse effects to hydrogeological receptors, as well as having potentially beneficial effects with regards to surface runoff. Therefore, neutral weight has been assigned to making the Order on this matter.

Miscellaneous

5.2.66. The applicant has undertaken the relevant assessments with regard to the effects of the proposed development on air quality, glint and glare, human health, major accidents or disasters, electromagnetic fields and waste, as required by EN-1, EN-3 and EN-5.

5.2.67. A range of mitigation measures are proposed in the oCEMP, the oOEMP, the oCTMP, the oDRP and the oFSMP that would address potential effects. These are certified documents under schedule 11 or the rDCO, and would be secured by requirements 12, 13, 14 19 and 7 of the rDCO respectively.

5.2.68. With the exception of the potential for glint and glare to affect users of the strategic road network, concerns raised during the examination did not undermine the applicant's assessments or conclusions, having accounted for the proposed mitigation measures and how they would be secured in the rDCO.

5.2.69. The measures expected to be used to mitigate glint and glare would be consistent with the EN-3 at paragraphs 2.10.134 to 2.10.136. However, there would be the potential for significant glint and glare effects on certain stretches of the A1 northbound. In this context the amendment of requirement 22 of the rDCO relating to the approval of the glint and glare strategy by naming National Highways as an approver is reasonable.

5.2.70. On the basis of this amendment to requirement 22, neutral weight is assigned to this issue with regard to the making of the Order. In the absence of this amendment the ExA would assign a little weight against the making of the Order.

Heritage balance

5.2.71. This section sets out the ExA's conclusions in relation to the heritage balance.

5.2.72. As set out in section 3.7, and summarised above, the ExA has not identified any substantial harm to, or loss of, any designated heritage assets. The ExA finds that the proposed development would result in no more than negligible, and therefore less than substantial harm to the settings of some designated heritage assets.

5.2.73. Taking into account the significant public benefits of the proposed development, including its contribution to meeting the urgent need for low carbon generating infrastructure, the ExA is satisfied that there is a clear and convincing justification for the negligible harm to the settings of designated heritage assets that may result from the proposed development, both individually and collectively.

5.2.74. The ExA has also found that there would be the potential for less than substantial harm to occur to a NDHA. However, the ExA has acknowledged the applicant's proposed mitigation measures and considers that, having regard to the scale of harm and the likely significance of the NDHA, on balance this harm is outweighed by the very great/ substantial public benefits that would arise.

5.2.75. In coming to a view on these matters, the ExA has had regard to the duties under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. However, the need for, and very great/ substantial benefits of, the proposed development would outweigh the harm that has been identified in relation to the significance of both designated and non-designated heritage assets. Whilst the ExA affords great weight to the desirability of preserving these assets, the ExA is mindful of the fact that the effects of the proposed development would be both temporary and reversible, albeit long term. The ExA therefore considers that the overall harm should be afforded a little negative weight in the planning balance.

5.3. THE OVERALL PLANNING BALANCE

Table 9: Summary of findings on main planning issues

Issue	Finding	Weighting	Section of this report
Need and alternatives	Positive	Very great/ substantial	3.2
Biodiversity and ecology	Positive	Moderate	3.5
Socio-economic	Positive	A little	3.13
Landscape and visual	Negative	Great	3.10
Agricultural land	Negative	Moderate	3.4
Traffic and transport	Negative	A little	3.14

Cultural heritage and archaeology	Negative	A little	3.7
Noise and vibration	Negative	A little	3.11
Cumulative effects	Negative	A little	3.8
Site selection and design	Neutral	Does not affect the balance	3.3
Climate change	Neutral	Does not affect the balance	3.6
Ground conditions and land contamination	Neutral	Does not affect the balance	3.9
Recreation	Neutral	Does not affect the balance	3.12
Water environment and flood risk	Neutral	Does not affect the balance	3.15
Miscellaneous	Neutral	Does not affect the balance	3.16

HRA considerations

5.3.1. This section sets out the ExA's conclusions in relation to the Habitats Regulations Assessment (chapter 4).

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

5.3.3. The ExA's findings are that, subject to the mitigation measures to be secured in the rDCO, adverse effects on the integrity of the Humber Estuary Special Area of Conservation and Ramsar site from the proposed development, when considered alone or in-combination with other plans or projects, can be excluded from the impact-effect pathways assessed.

5.3.4. 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.

5.4. FINDINGS AND CONCLUSIONS

5.4.1. Taking the above factors into account and having had regard to all important and relevant matters, the ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, that would mean that the DCO should not be made.

6. LAND RIGHTS

6.1. INTRODUCTION

6.1.1. This chapter of the recommendation report deals with the compulsory acquisition (CA) of land and rights over land, and related matters including temporary possession (TP), human rights and the Public Sector Equality Duty (PSED).

6.1.2. The principal issues concerning land rights that were considered during the examination included but were not limited to:

- the need for and the amount of land, rights and powers proposed to be subject to CA and/ or TP
- the requirement for the powers sought and the need to establish a compelling case in the public interest
- the position and/ or effects on statutory undertakers (SU) and protective provisions (PP) and whether the tests of section (s)127(2), (3), (5) and (6) and s138(4) of the Planning Act 2008 (PA2008) are satisfied
- the adequacy and security of funding for compensation
- whether the proposals meet the requirements of PA2008 in all other respects.

6.1.3. This chapter records the examination of these proposals and the related issues.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The draft Development Consent Order (dDCO) first included with the application [APP-007] and all subsequent dDCOs submitted by the applicant to the examination, up to and including its final draft version [REP6-004], include provisions intended to grant the applicant powers of CA and TP of land and rights over land.

6.2.2. The powers being sought by the applicant and how they relate to the principal articles in the dDCO were set out, described, and explained in the following documents:

- Book of Reference (BoR) [APP-015]
- Explanatory Memorandum [APP-009]
- Funding Statement [APP-014]
- Land Plans [APP-018]
- Statement of Reasons (SoR) [APP-010, APP-011, APP-012, APP-013]

6.2.3. A number of these documents were updated or amended during the examination. The final Application Guide [REP6-002] showed that as of the end of the examination, the most up to date versions were as follows:

- BoR [REP6-011, REP6-013]
- Explanatory Memorandum [REP6-007]
- Funding Statement [REP3-010]

- Land Plans [REP1-004]
- SoR [REP6-009]

6.2.4. The applicant provided a Land Rights Tracker (LRT) [APP-016] which set out the progress of negotiations with affected parties (AP). This was updated throughout the examination, and a final version was provided at deadline (D)6 [REP6-015].

6.2.5. These documents set out the land and rights sought by the applicant, together with the reason for their requirement and compensation provisions. Taken together with the submissions made to the examination, they form the basis of the Examining Authority's (ExA) considerations in this chapter.

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The purposes for which the CA and TP powers are required are set out in the SoR [REP6-009]. In summary, the applicant states that the powers in the dDCO are being sought in order to be able to construct, operate, maintain and decommission the proposed development without impediment, such that deployment of the proposed development can contribute to meeting the need for renewable energy generation, set out in Government policy.

6.3.2. The work numbers in schedule 1 of the dDCO [REP6-004] define the construction, operation, maintenance, and decommissioning works that would comprise the proposed development.

6.3.3. The applicant explains in section 10.2 of the SoR that it has committed to securing the necessary land and rights required for the proposed development by voluntary agreement and has concluded an option agreement with the owners of the vast majority of the Order land.

6.3.4. However, as agreement has not been reached with a small number of parties, the applicant explains that it is seeking TP and CA powers in the dDCO in order to provide certainty that the required land rights can be secured.

6.3.5. The applicant highlights in section 7 of the SoR that the proposed development would deliver a significant number of public benefits. These would include:

- helping to meet the urgent need for new, low carbon energy infrastructure and providing enhanced energy security
- a projected net reduction in emissions of at least 800,000 tonnes of carbon dioxide equivalent (tCO2e) (the ExA notes that the figure calculated in ES Chapter 15 [REP3-026] is 1,208,351 tCO2e)
- provision of battery storage
- significant biodiversity and ecology improvements, including Biodiversity Net Gain (BNG)

6.3.6. The applicant considers that there would be no certainty that these benefits could be achieved without the authorisation of compulsory acquisition powers in the dDCO.

6.4. THE CA AND TP POWERS SOUGHT

6.4.1. The powers authorising the acquisition of land, or interests in and/ or rights and restrictive covenants over land, including powers to temporarily use land during construction, are principally contained in articles 22, 24, 31 and 32 of the dDCO.

6.4.2. The powers sought are for the acquisition of:

- all interests in land, including freehold (article 22 in the dDCO) - shown edged red and shaded pink on the Land Plans
- permanent acquisition of new rights (article 24 in the dDCO) - shown edged red and shaded blue on the Land Plans
- powers to extinguish, suspend or override rights and easements (article 25 in the dDCO)
- powers for the temporary use of land (article 31 and article 32 in the dDCO)
- powers pursuant to the Mining Code (article 36 in the dDCO)

6.4.3. No land is required solely for temporary use and where the applicant is seeking to acquire land, new rights or restrictions over land, the power for temporary use of such land is also sought (articles 31 and 32 of the dDCO).

6.5. LEGISLATIVE REQUIREMENTS

6.5.1. The application included a request for CA and TP powers. The source of those powers is contained in the applicant's preferred dDCO submitted at the end of the examination [REP6-004]. All further references to the dDCO in this chapter relate to this version, unless otherwise stated.

6.5.2. The CA powers sought can only be granted if the conditions set out in s122 and s123 of PA2008 are satisfied.

6.5.3. S122(2) of PA2008 provides that a development consent order (DCO) may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.5.4. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. This means that the public benefit to be 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 coherence in the decision-making process.

6.5.5. S123 of PA2008 requires the SoS to be satisfied that one of the three following conditions is met:

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

6.5.6. In addition to the legislative requirements, the "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the former Department for Communities and Local Government) (CA Guidance) sets out a number of general considerations to be addressed when CA powers are sought. These are that:

- all reasonable alternatives to CA have been explored
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate
- the applicant has a clear idea of how it intends to use the land
- the applicant must be able to demonstrate that there is a reasonable prospect of the requisite funds becoming available to meet the compensation liabilities that might flow from the exercise of CA powers
- the decision-maker must be satisfied that the purposes for which the CA of land are included in the application are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected

6.5.7. Furthermore, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable. It adds that, as a general rule, authority to acquire land compulsorily should only be sought as part of an Order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the CA of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case, the CA Guidance says it is reasonable to include provision authorising CA covering all the land required at the outset.

6.5.8. S127 of PA2008 applies to SU land. It provides that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

6.5.9. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SU to the extent that the SoS is satisfied that the right can be purchased without serious detriment to the carrying out of the undertaking, or that any detriment can be made good.

6.5.10. S131 of PA2008 applies to the CA of common land, open space or fuel or field garden allotments and s132 applies to the CA of rights over such land. Common land, open space or fuel or field garden allotments is defined as

'special category land' under Regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

6.5.11. S132(12) of PA2008 defines 'open space' as having the same meaning as s19 of the Acquisition of Land Act 1981: "…any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground".

6.5.12. S131 and s132 of PA2008 make provision for special parliamentary procedure to apply where a DCO authorises the CA of, or rights over special category land unless the SoS is satisfied that one of the relevant subsections applies and that fact is recorded in the Order. Special parliamentary procedure requires that powers of CA relating to the special category land be subject to further scrutiny by Parliament, before the DCO covering the CA can come into effect.

6.5.13. Crown land is defined in s227(2) of PA2008 as land in which there is a Crown interest or a Duchy interest; those terms are defined in s227(3) and (4) thereof respectively. S135(1) of PA2008 serves to prohibit its CA, in that it directs that an interest in Crown land may only be acquired where (a) it is not held by or on behalf of the Crown, and (b) the consent of the appropriate Crown authority has been secured. The expression 'appropriate crown authority' is defined in s227(5) of PA2008.

6.5.14. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of SUs only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which the Order relates.

6.5.15. Further to part 1 of schedule 5 to PA2008, TP powers are capable of being within the scope of a DCO. 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 for CA powers. This is because, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. However, they must be justifiable and compatible with human rights tests as discussed below.

6.5.16. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions will now not be brought into force.

6.5.17. Article 8(d) of the dDCO sought to disapply the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to TP of land under articles 31 (temporary use of land for constructing the authorised development and article 32 (temporary use of land for maintaining the authorised development) to protect the applicant's position but could now be deleted in the light of the Planning and Infrastructure Act 2025.

HUMAN RIGHTS

6.5.18. Human rights have been considered by the ExA with reference to the European Convention on Human Rights (ECHR) and in particular:

- Article 6 (fair and public hearing)
- Article 8 (respect for private and family life, home and correspondence)
- Article 1 of the First Protocol to the ECHR (peaceful enjoyment of possessions)

6.6. EXAMINATION OF THE CA AND TP CASE

6.6.1. In examining the application, the ExA has considered all written material in respect of CA and TP. Written questions were addressed to APs and the applicant in the ExA's first and second written questions (ExQ1) [PD-008] and (ExQ2) [PD-011]. A CA hearing was held in February 2026 (CAH1) [EV6-002, EV6-004]. Access Required Site Inspections (ARSI) were undertaken to enable the ExA to view the land and properties of APs as appropriate [EV1-002].

The examination process

6.6.2. The ExA's approach to the question of whether CA powers should be granted, and if so, what it should recommend to the SoS to grant, has been to apply the relevant sections of the PA2008, including s122 and s123, the CA Guidance, the Human Rights Act 1998, and the PSED established by the Equalities Act 2010.

6.6.3. In addition, and in light of the representations received and the evidence submitted, the ExA has also considered whether a compelling case has been made in the public interest, balancing the public interest against private loss.

The applicant's case

6.6.4. The applicant's case for the CA and TP powers sought is set out in sections 7 to 10 of the SoR [REP6-009]. This contains the applicant's explanation of how it considers the proposed development meets the tests set out in s122 of PA2008 and describes how the applicant considers that it has demonstrated the general considerations of the CA Guidance.

6.6.5. In summary, the applicant considers that the land over which it intends to acquire CA powers is required for the purposes of, to facilitate, or is incidental to the construction, operation, maintenance and decommissioning of the proposed development. Considered together, the Land Plans [REP1-004] and Works Plans [APP-019] indicate that each area of the land affected by CA or TP is required for the carrying out of one or more of the works identified in schedule 1 of the dDCO.

6.6.6. The applicant considers that there is a compelling case in the public interest for the land, or rights over the land, to be compulsorily acquired given the meaningful and timely contributions that would be made to the UK's need for

energy security and its commitments to net zero objectives. The applicant also highlights other benefits, including the delivery of BNG, the provision of battery storage, and employment generation.

6.6.7. It also considers that there is a compelling case in the public interest for the power to extinguish, suspend, or interfere with private rights to the extent necessary to deliver the proposed development and that the proposed interference with private rights is both proportionate and necessary. It also notes that compensation would be payable to anyone whose rights are extinguished, suspended, or interfered with.

Alternatives

6.6.8. The CA Guidance states that the applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored.

6.6.9. The applicant's approach to the consideration of alternatives in relation to CA is set out in sections 7 and 10 of the SoR [REP6-009]. These explain how the applicant has considered all reasonable alternatives to CA, including negotiated agreements, alternative sites, and modified layouts for the proposed development.

6.6.10. The applicant explains that there would be no reasonable alternative to the proposed development because this would involve not developing a new electricity generating station connected to the National Grid Staythorpe Substation. The applicant considers that this would not be a reasonable alternative as it would not deliver the additional electricity generation and energy storage proposed.

6.6.11. With regards to alternatives to CA, the applicant explains that it has actively sought the acquisition of the land and rights needed by voluntary agreement, and to minimise the need for CA powers wherever possible. The applicant has entered into voluntary agreements with landowners for the majority of the land required.

6.6.12. The applicant's approach to site selection for the proposed development is set out in the Environmental Statement (ES) Chapter 4 (Vol 2): Alternatives [APP-047]. This explains how alternative locations were considered for the grid connection, and how different sites were considered for the Order limits. Key site selection constraints included agricultural land considerations (land use), landscape and visual impacts, and hydrological, ecological and geological features. Landscape designations and the proximity to public rights of way also informed site selection and the land rights required.

Grid connection optionality

6.6.13. In section 5.4 of the SoR [REP6-009] the applicant explains that its grid connection offer is to the National Grid Substation at Staythorpe. There are two options for the proposed development to connect to the National Grid Staythorpe Substation, which are:

- a connection via a consented, but as yet unbuilt, grid support battery energy storage system (BESS) which would be on land immediately to the west of the existing National Grid Staythorpe Substation, or
- connection directly to the National Grid Staythorpe Substation

6.6.14. The applicant explains that the need for these alternative options results from the grid support BESS not yet having been constructed. If this were to be constructed before the proposed development, then connecting via its substation would allow for a shared connection which would be resource efficient and cost effective.

6.6.15. Both options for the grid connection have been included within the dDCO and were considered as part of the applicant's environmental impact assessments. Article 24 of the dDCO [REP6-004] requires the applicant to notify the relevant planning authority of which method it intends to use to connect to the National Grid Staythorpe Substation ahead of the commencement of works related to work no. 6 or work no. 7.

Availability and adequacy of funds

6.6.16. The applicant's Funding Statement [REP3-010] explains that the applicant is funded by its parent company, Elements Green Ltd. The ultimate beneficial owner of Elements Green Ltd is Mr Afshin Afsharnejad, whose family office reported consolidated assets of US$1.19bn in 2024.

6.6.17. The current capital expenditure costs for the proposed development are estimated at £922 million, including all costs associated with construction, development, project management, financing, and land acquisition. Compensation for the exercise of CA land powers is estimated at £62.2 million. This includes contingency. Although the applicant does not identify any interests which it considers would be eligible to serve a blight notice, should any such claims arise, the applicant confirms that it has sufficient funds to cover the associated costs.

6.6.18. In order to fund the proposed development, the applicant intends to secure additional capital from a strategic equity investor. This equity partner model is standard for utility-scale solar projects. Should market conditions delay that subscription, the applicant explains that the proposed development remains fully bankable via limited recourse project finance debt, a structure the applicant has already used successfully on another scheme. A joint venture arrangement with a co-developer is also under consideration. The applicant is confident that the proposed development would present an attractive and commercially viable opportunity for investment.

6.6.19. The adequacy of funding (for CA or the wider proposed development) was not raised by any AP during the course of the examination.

6.6.20. On the evidence available, the ExA is therefore satisfied that the applicant has the ability to procure the necessary funds to carry out the proposed development, and that it can exercise the CA powers as required. In addition, article 46 of the dDCO provides that the CA powers contained in the DCO must not be exercised unless a guarantee (or an alternative form of security)

is in place, pursuant to the liabilities of the undertaker to pay compensation in respect of the exercise of the CA powers required.

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

6.6.21. The ExA accepts that none of the alternatives considered for the proposed development would negate the need for CA or TP powers over the Order land. The ExA considers that the applicant has adequately demonstrated that it has explored all reasonable alternatives to CA (including modifications to the proposed development) and has met the requirements of the CA Guidance in this respect.

6.6.22. The ExA is satisfied that the CA powers over the land required for the proposed development are justified and that the CA powers authorised over the land are limited to land and/ or rights which are either required for the proposed development, to facilitate it, or are incidental to it.

6.6.23. Furthermore, the ExA considers that the dDCO contains sufficient provision to ensure that only one of the grid connection options would be taken forward.

6.6.24. Overall, the ExA agrees with the applicant's conclusions on the generality of the case, and subject to the further consideration of the plots affected by the outstanding objections/ representations below, considers that the tests set out in s122(2) and s122(3) of the PA2008 have been met.

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

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

- Richard Gill and Drone Defence Services Ltd (DDSL)
- Paul Mitchell and Pamela Gladwin
- Mick George Ltd

6.7.2. These representations and objections are considered further below. In addition, there are a number of plots where no objection was made but where the Land Rights Tracker indicates agreement has not been reached between the applicant and the land owner. These have also been considered in respect of the tests set out in s122 of PA2008.

Mr R Gill and Drone Defence Services Ltd

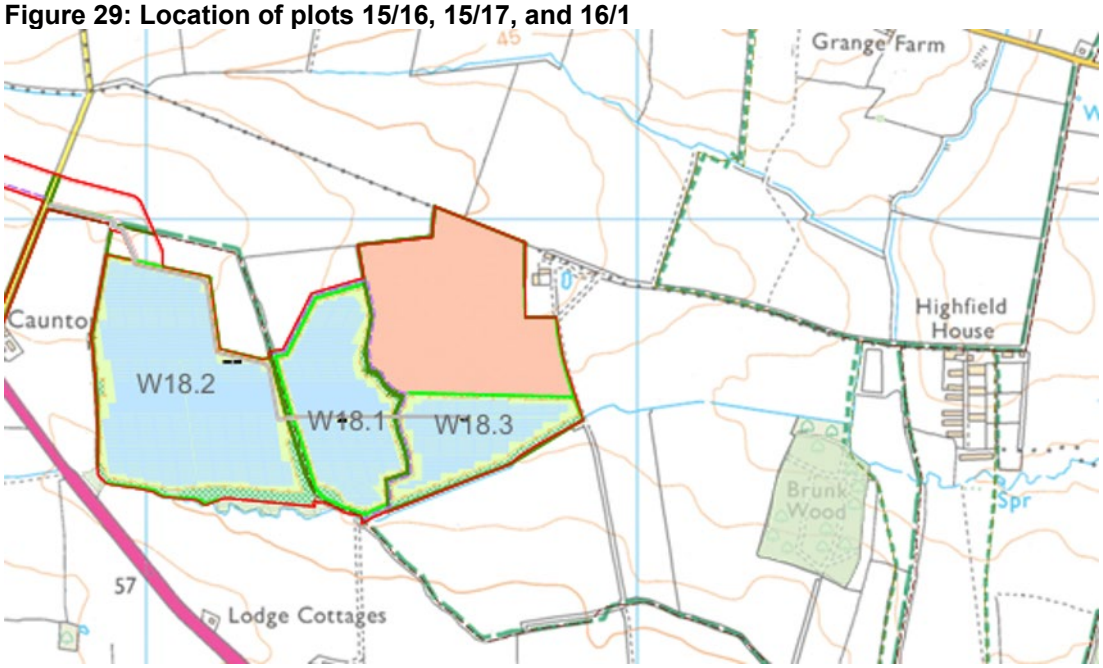
6.7.3. Plots 15/16, 15/17, and 16/1 were the subject of extensive submissions made by Mr R Gill and by DDSL. Mr Gill is listed in the BoR [REP6-011] as an AP having a Category 2 interest in these plots of land and is confirmed as operating DDSL as a business from his property. The location of the plots is shown in Figure 29 below.

6.7.4. Relevant representations (RR) were initially received from Mr Gill and DDSL separately. At all subsequent examination deadlines and during CAH1, the submissions were prepared jointly.

6.7.5. The applicant is seeking permanent rights over the plots for the installation of solar photovoltaic (PV) modules on plot 15/16, and biodiversity mitigation on plots 15/17 and 16/1. The Land Rights Tracker shows that agreements with the freehold owner of plots 15/16, 15/17, and 16/1 as completed [REP6-015].

6.7.6. In his RR [RR-181], Mr Gill explained that he lives in an off-grid property (having no connection to mains services). This is known as Caunton Lodge Farm (CLF) and is outside the Order limits. The southern and western boundaries of CLF face towards plots 15/16, 15/17, and 16/1, which comprise a 42-acre field registered as Title Number NT332979. CLF benefits from express easements over plots 15/16, 15/17, and 16/1, lasting until 2078. A copy of Title NT222979 was submitted into the examination at the request of the ExA [REP4-074].

Figure 29: Location of plots 15/16, 15/17, and 16/1



Source: Figure 5.2 (3) [APP-030]

6.7.7. These rights allow the laying and maintenance of services across the land, which Mr Gill considers to be vital for an off-grid home to be able to connect to mains services if ever required. Furthermore, Mr Gill considers that by building across enforceable rights, the proposed development would create an avoidable legal conflict and undermine the viability of his home.

6.7.8. Mr Gill has confirmed that there are no existing services within the easement, and that the main service connections lie to the southwest of Mr Gill's property [REP3-100].

6.7.9. Mr Gill has also raised concerns that the proposed development would create a new public right of way (PRoW) adjacent to his property, allowing direct views into his garden and house. He has also stated that he considers his

property to be a non-designated heritage asset which the applicant has neglected to consider, and that the proposed development would negatively affect the visual amenity from his property. As these concerns relate to the planning merits of the proposed development, they are considered in further detail in section 3.12, section 3.7 and section 3.10 of this recommendation report respectively.

6.7.10. A separate RR in respect of plots 15/16, 15/17, and 16/1 was submitted by DDSL [RR-045] as an IP. Whilst not listed in the BoR, DDSL explained that it is a lawful occupier of CLF owned by Mr Gill. DDSL have a Licence to Occupy CLF, granted in 2023. The site operates as a research and development hub for defence and security technologies, focusing on unmanned aerial systems (drones) and airspace monitoring platforms.

6.7.11. DDSL explained that its operations comply with the Civil Aviation Authority's (CAA) Open Category A3, which facilitates prototype development without requiring pre-approved aircraft specifications, making use of the low-risk rural setting at plots 15/16, 15/17, and 16/1. DDSL stated that it is pursuing CAA accreditation for an atypical air environment, in order to be able to undertake beyond visual line of sight (BVLOS) operations, which would represent a significant commercial advantage for the organisation, and which would align with its commercial programme in support of national security interests.

6.7.12. In addition to occupation rights, DDSL explained that it benefits from the easement over plots 15/16, 15/17, and 17/1 (Title NT332979), applicable to both Mr Gill as owner and DDSL as occupier, which permit the installation and operation of service infrastructure. These easements enable the deployment of ground sensors, essential for developing safe BVLOS systems.

6.7.13. DDSL considers that the proposed solar infrastructure, specifically panel blocks W18.1 (located adjacent to plots 15/16, 15/17, and 16/1) and W18.3 (located on plot 15/16), together with the new PRoW alongside the property, would fundamentally disrupt and negatively impact this environment. The presence of solar panels, combined with the buffer distances required by CAA regulations in relation to industrial infrastructure, would reduce the flight volume for testing by 72%. This, combined with a resultant increase in ground risk class from the change in environment from farmland to infrastructure, would render the site non-viable for the A3 and BVLOS activities which DDSL is seeking to undertake.

6.7.14. In addition, with regards to the drone testing infrastructure present on the easement, Mr Gill highlighted an intention to install power and data cables over the land, and that this would be likely to take place before the start of works for the proposed development [REP3-100].

6.7.15. Mr Gill and DDSL's concerns are further developed in [AS-078] and [REP2-128], which argue that:

- Plots 15/16, 15/17, and 16/1 are not essential for the delivery of the proposed development, and should be removed from the Order limits

because other alternatives are available, the Order limits had previously been refined elsewhere, and because the applicant's own evidence (referring to the Design Approach Document [REP1-018] and ES Chapter 4 [APP-047]) shows that the Order limits can be reduced without affecting the 800MW design capacity
- DDSL, as the beneficiary of the easement over Title NT332979, should also be listed in the BoR
- With regards to the easement, the proposed development would materially interfere with the future exercisability of long-standing express easement rights across plots 15/16, 15/17, and 16/1, both for Mr Gill's ability to install services such as mains water and electricity to his property at a future date, and for DDSL's ability to install and use data connections for the testing of monitoring equipment for drones

6.7.16. The applicant considered that the activities outlined by DDSL [AS-078] in relation to the development and testing of drone security and defence systems do not accord with the residential planning status of Mr Gill's property, nor with the agricultural planning status of plots 15/16, 15/17 and 16/1 [REP2-116]. The applicant submits that no weight should be applied to alleged impacts of the proposed development on what it considers to be an unlawful business use.

6.7.17. Furthermore, in support of this position, the applicant considered that a planning application submitted by Mr Gill on 3rd December 2025 for the erection of a home working pod in the garden of Mr Gill's property, which states that the pod would not be used for any activity that would alter the residential character of Mr Gill's property, implies that there is no planning permission for a business use at Mr Gill's property [REP2-116].

6.7.18. With regards to the testing activities, the applicant considered that neither DDSL nor Mr Gill have a property right which entitles them to overfly the Order land, and which could therefore be interfered with pursuant to the powers in the dDCO. In the applicant's view, the powers of compulsory acquisition sought in the dDCO are not therefore relevant to the issue of whether or not drone flight can continue [REP2-116].

6.7.19. Furthermore, the applicant considered the technical equipment referred to by DDSL to be of a very different nature to the services envisaged by the easement. Such systems do not serve the benefitting land within Mr Gill's property [REP2-116].

6.7.20. The applicant also challenged the basis upon which DDSL states that drone and drone defence system testing would no longer be possible, or truncated, as a result of the presence of solar panels in plot 15/16 [REP2-116]. The applicant considered the buffer distances stated by DDSL would not be required for A3 flying, that the presence of human observers could simulate certain activities required for BVLOS testing, and that the presence of solar PV would not therefore prevent drones from being flown pursuant to a licence to fly BVLOS, including overflight over the solar PV fields. This is explained by the applicant in further technical detail in [REP2-116]. In response to

ExQ2 Q.10.2.2 [PD-011], DDSL set out in further detail why it considered that its activities would be affected [REP4-071].

6.7.21. With regards to the easement rights pertaining to the laying of services to Mr Gill's property, the applicant considered that Mr. Gill currently has no rights over any of the land in question to maintain it unbuilt or free from vegetation or structures. The easement rights enjoyed are limited solely to the laying of services, and there is no right to prevent development on the land. Therefore, any impacts are confined to whether services can continue to be provided to serve Mr Gills property.

6.7.22. To address Mr Gill's and DDSL's concerns, the applicant proposed a service 'corridor' approximately 5 metres wide, starting at Mr Gill's property, passing to the mitigation area at the bottom of plot 15/17, and leading to a services cabinet which supplies the drone testing equipment [REP3-100]. This would be an unconstrained area that would facilitate the laying of services such as mains water and electricity within the existing easement. The orientation of the service corridor has been chosen by the applicant in order to facilitate the installation of the cables that Mr Gill has stated that DDSL is intending.

6.7.23. However, Mr Gill and DDSL considered the applicant's proposed service corridor to be insufficient due to a number of reasons related to technical feasibility [REP3-111]. Based upon their own assessment, they considered that a corridor with a minimum width of 25 metres would be required in order to accommodate services in a manner that is technically feasible and compliant with standards.

6.7.24. The ExA questioned the applicant with regards to the technical feasibility of the proposed service corridor, and Mr Gill and DDSL's comments (ExQ2 Q10.2.1) [PD-011]. In response, the applicant advised that it considered the proposed corridor to be sufficient, that a 25m corridor as suggested by Mr Gill for an electricity cable would be excessive and unjustified and that the existing land constraints do not allow for a continuous corridor of this width [REP4-060].

6.7.25. The ExA also questioned the applicant (ExQ2 Q10.2.1) [PD-011] about the need to include plots 15/16, 15/17, and 16/1 within the Order limits, seeking to understand why the applicant considered these specific plots to be necessary for the proposed development (and why they could not be removed), if alternatives to the use of CA powers had been considered, and if overplanting or improved solar PV technology could compensate for the loss of the plots (with particular reference to plot 15/16).

6.7.26. In response, [REP4-060] the applicant summarised its reasons as the following:

- the associated loss in generating capacity of the solar PV areas comprised in plot 15/16 would be more than marginal because the proposed development has already assumed the most efficient panel type on the market, and the overplanting ratio would not allow for further

reductions in scale to take place without a material effect on the total generating capacity
- land to the north of plots 15/16, 15/17 and 16/1 was considered but has topography that would materially increase the visual effects of the proposed development, and was therefore discounted
- land to the east and south is encumbered by the same rights as plots 15/16, 15/17 and 16/1, and so the need to interfere with and impacts on rights for delivery of the proposed development would not be avoided. In addition, the land to the south and east was discounted as it would have greater visual effects due to the land's topography
- an Option Agreement for lease of plots 15/16, 15/17 and 16/1 with the owner of these land parcels has already been completed

6.7.27. Further submissions were received from Mr Gill and DDSL at D4 [REP4-071], D5 [REP5-047], and D6 [REP6-070]. These further expanded upon the technical requirements and guidance for drone testing that Mr Gill and DDSL consider to be relevant to their concerns, the use of the easements, and concerns related to the planning merits of the proposed development which Mr Gill considers to be relevant to his property.

6.7.28. At the end of examination, Mr Gill and DDSL's objections to the CA of plots 15/16, 15/17, and 16/1 had not been withdrawn.

ExA's consideration

6.7.29. The ExA has considered all of the submissions put forward by Mr Gill and DDSL, and the applicant, which are extensive and consider in detail the technical and legal matters concerning the activities undertaken on this land, and the legal implications of the acquisition of rights therein. The ExA has considered all of the matters outlined therein with regards to the CA tests set out above.

6.7.30. The applicant made several submissions concerning the legality of the operation of DSSL from Mr Gill's property. The ExA has no view on this matter, and its conclusions are made without consideration as to the legality of the activities undertaken by DDSL at Mr Gill's property.

6.7.31. The ExA does accept that there would be some degree of impact on the operational activities of DDSL due to the presence of the solar panels within plot 15/16. However, the ExA is persuaded that alternative testing or flying strategies would still allow some testing activities to be undertaken, and that the testing activities would not be rendered completely unviable by the presence of the solar panels in plot 15/16.

6.7.32. The ExA also notes that the applicant has stated that the entire land area over which Mr Gill benefits from the easement is approximately 873,000 square meters (sqm), of which Plot 15/16, where the solar PV modules would be installed, is approximately 46,800 sqm, being circa 5.4% of the land subject to the rights [REP4-059]. The ExA accepts that this is minimal and considers that the applicant has sought to minimise land take over these plots.

6.7.33. Furthermore, the applicant has proposed a service corridor which would allow the passage of services to Mr Gill's property. Although Mr Gill disputes the technical feasibility of this corridor, the ExA has considered the evidence put forward and sees no reason to disagree with the applicant's position that a 5-metre width would be sufficient for this purpose. The ExA therefore considers this to be a reasonable proposition which would enable Mr Gill to be able to lay services to his property at a future date should he wish to do so.

6.7.34. The ExA is satisfied that the applicant has demonstrated that reasonable alternatives have been explored through the explanation of the approach to site selection and consideration of alternative parcels of land adjacent to plots 15/16, 15/17, and 16/1. The ExA is also satisfied that the applicant has sufficiently demonstrated why these plots of land are necessary for the proposed development.

6.7.35. The ExA therefore considers that s122(2) and s122(3) of PA2008 to be met, and that any interference with Mr Gill's and DDSL's private rights would be proportionate and for a legitimate purpose. There would be a compelling case in the public interest for the land to be acquired compulsorily.

Pamela Gladwin and Paul Mitchell

6.7.36. The applicant is seeking all interests in plots 21/12, 21/13, 21/14, 21/15, 21/16, 21/17, 21/18, 21/19, 22/1, 22/2, 22/3, 22/4, 22/5, 22/6, 22/8, 22/9, 22/11, 22/12, 22/13, 22/14, 22/25, 22/27, 22/29, and 22/30, and rights over plots 22/7 and 22/10.

6.7.37. Mrs Gladwin and Mr Mitchell are listed in the BoR as having a Category 2 interest over these plots of land, in respect of rights granted by a Transfer dated 17 September 1997.

6.7.38. Mrs Gladwin and Mr Mitchell submitted separate but related representations [RR-169] and [RR-174] raising concerns around the potential effects of the proposed development on their property, including matters such as loss of visual amenity and the increased risk of flooding. Their property is located outside of the Order limits and in the vicinity of the plots of land above. As these matters relate to the planning merits of the proposed development, they are covered in section 3.10 and section 3.15 of this recommendation report respectively.

6.7.39. At CAH1 [EV6-002, EV6-004], Mrs Mitchell and Mr Gladwin highlighted the existence of a water supply pipe noted in the BoR [REP6-011] in relation to their category 2 interest. The location of the pipe was not known. Concerns were raised around the potential for this supply pipe to be damaged or disrupted by the proposed development, as well as the need to safeguard existing rights for inspection and maintenance.

6.7.40. In response, the applicant confirmed that it had located the right referred to within a transfer dated 17 September 1997 [REP6-011]. This document granted a right to the free and uninterrupted passage and running of water

through a water supply pipe laid, or to be laid, within the perpetuity period under retained land serving the property. This also allowed for the renewal, inspection and maintenance of the pipe. The applicant clarified that the retained land was described as land and premises adjoining or neighbouring the property, now or formerly forming part of the Thoresby Estate, which explained why the right appeared across multiple plots of land.

6.7.41. The applicant also highlighted that section 5.3.9.6.3 of the Outline Construction and Environmental Management Plan (oCEMP) has provision for a watching brief during construction and a methodology for identifying and managing such infrastructure. Prior to construction, the applicant would engage with landowners to obtain available plans in order to avoid existing apparatus. Where avoidance was not possible, the approach would be to consider diversion or replacement in consultation with affected parties.

6.7.42. In its post-hearing submission [REP3-100], the applicant later confirmed that an existing water pipe is located adjacent to Mrs Mitchell and Mr Gladwin's property and that this belongs to Severn Trent. This would be unaffected by the proposed development. Any future connection from this to Mrs Gladwin and Mr Mitchell's property would be unaffected by the works, and the right to make that connection would be unaffected by the provisions of the dDCO.

6.7.43. The applicant confirmed that should there be a need to lay a supply pipe over land adjacent to the property and which is used for work no. 2 (cable route) and work no. 3 (mitigation), then this would be possible subject to prior approval from the applicant. However, it would not be possible to lay a supply pipe across land used for work no. 1 (solar PV modules) [REP3-100].

6.7.44. The applicant also amended article 25 (Private Rights) of the dDCO at D3 [REP3-004] to clarify that private rights over land are not automatically extinguished and can continue to be exercised provided that there is no incompatibility with the proposed development.

6.7.45. Further written questions were addressed to Mrs Gladwin and Mr Mitchell at ExQ2 Q10.2.4 [PD-011] to understand if the supply pipe was the only means of provision of water to the property, if its location had been determined, and if there were any comments on the applicant's position set out during and following CAH1. No response was received.

ExA's consideration

6.7.46. The ExA is satisfied that the applicant has adequately considered the potential presence of the water supply pipe on Order land, and the need to ensure that water supply is maintained to Mrs Gladwin's and Mr Mitchell's property. Having considered the location of Mrs Gladwin's and Mr Mitchell's property in relation to the Order land, the ExA is satisfied that should there be a future need to lay a water supply pipe to the property, either from the Severn Trent supply or otherwise, then this would be reasonably possible. The ExA considers that the provisions of the oCEMP are appropriate for the identification and protection of any previously unidentified supply pipes found during construction works.

6.7.47. In respect of Mrs Gladwin's and Mr Mitchell's land interests, the ExA therefore considers that s122(2) and (3) of PA2008 have been met.

Mick George Ltd

6.7.48. The applicant is seeking rights in relation to plots 2/5, 2/6, 2/7, 2/8, 2/9, 2/10, 2/11, 2/16, 2/17, 2/18, 2/19, 2/20, 2/21, 2/22, 2/23, 2/24, 2/25, 2/26, 2/28, 2/29, 2/31, 2/37, 2/40, 2/41, 2/42, 2/45, 2/46, 2/47, 3/1, and 3/3.

6.7.49. Mick George Ltd (MGL) is listed as a Category 2 interest for these plots of land.

6.7.50. MGL submitted a RR explaining that it has an option for a mineral lease on land affected by the dDCO [RR-138]. MGL objected to the proposed development, considering that it would have a sterilising effect on the underlying mineral unless worked prior to the commencement of works for the proposed development.

6.7.51. At ExQ1 Q10.1.6 [PD-008], the ExA asked MGL for further comment and to advise on ongoing discussions with the applicant, but no response was received. No representations were received from the freehold owners of the plots, and no submissions were received from MGL during the examination.

6.7.52. The applicant's closing statement [REP6-064] noted that it was not aware of any current planning permission in place for the extraction of minerals on the affected land, nor of any future planning permission being sought therein. The applicant was unaware of any programme for extraction, nor of the viability of any future extraction.

6.7.53. At the close of the examination, the applicant was in discussions with both the landowner and MGL. This was noted in the LRT [REP6-015].

ExA's consideration

6.7.54. Without further information regarding the nature of the potential extraction activities, the ExA is unable to consider the viability of the extraction of minerals from the affected land, nor the position of MGL following any discussions with the applicant that have taken place during the examination.

6.7.55. On the basis of what is known and the position put forward by the applicant, the ExA considers the applicant's approach and position to be reasonable. The ExA is also satisfied that the applicant's requirement for CA powers in respect of these plots is reasonable, and that the provisions of s122(2) and (3) of PA2008 have been met.

Plots 2/45, 2/46, 2/48, 3/2, 3/3, 5/8, 10/8, 10/9 (land to be acquired)

Plots 1/1, 1/2, 1/3, 2/5, 2/24, 2/49, 5/7, 7/19, 8/9, 8/12, 8/13, 8/27, 9/2, 9/3, 10/6, 10/7 (acquisition of rights by the creation of new rights or the imposition of restrictive covenants).

6.7.56. No objection or representation was made in respect of these plots. The LRT indicates that while the applicant has been engaged with the owners of these

plots, at the close of examination discussions were ongoing and agreement had not been reached. The ExA has no reason to believe that the CA of rights over these plots would be materially harmful to private interests.

6.7.57. The ExA is satisfied that the plots would be required to facilitate the proposed development when set against the established need case, and that there is a compelling need in the public interest for the CA of rights over this land.

Other

6.7.58. Robert Reeve [RR-186] expressed concerns about the impact of the proposed development on a lake that he owns, which he appeared to consider was located on land within the Order limits. At ExQ1 Q10.1.10 [PD-008], the ExA asked Mr Reeve for further detail on the nature of any land rights in which he may have interest, and the potential effects on these rights. No response was received. Mr Reeve is not listed in the BoR and the applicant has stated that the lake is located on land outside the Order limits [REP6-064].

6.7.59. James Chase expressed a general opposition to the principle of CA [RR-077] in the context of the effects of the proposed development. Mr Chase does not have any interests in land related to the proposed development and did not respond to ExQ1 Q10.1.5 [PD-008], which sought to understand if he had any land interests that would be affected.

6.7.60. The ExA is therefore satisfied that the representations made by Mr Reeve and Mr Chase do not need further consideration in respect of land rights matters.

6.8. STATUTORY UNDERTAKERS

6.8.1. The following SU would have their land rights affected by the proposed development [REP6-011, REP6-013]. These are:

- Cadent Gas Ltd
- National Gas Transmission Plc (NGT)
- National Grid Electricity Transmission plc (NGET)
- National Grid Electricity Distribution (East Midlands) Plc (NGED)
- RWE Generation UK Plc (RWE)
- Severn Trent Water Ltd
- Trent Valley Internal Drainage Board (TVIDB)

6.8.2. At the end of the examination, agreement had been reached and objections withdrawn relating to PP with Cadent Gas Ltd [REP5-034], [AS-081], NGED [AS-093, AS-095] and National Highways [REP6-076]. Severn Trent Water Ltd did not engage in the examination [REP6-054].

6.8.3. Agreement on PP was not reached with NGT, NGET, RWE, and TVIDB. With regards to TVIDB, whilst its initial objection was withdrawn [AS-085, AS-086], the final Statement of Common Ground (SoCG) with the applicant was not signed [REP6-059].

National Gas Transmission

6.8.4. The applicant is seeking rights over plot 1/6, in which NGT has a category 2 interest. Notwithstanding an initial agreement reached between NGT and the applicant, NGT sought to re-open negotiations in relation to PP and agreement remained outstanding at the close of examination [REP6-069].

6.8.5. As NGT did not object to the use of CA Powers, these matters are dealt with in chapter 7 of this report, where the ExA has explained its recommendation that the form of protective provisions proposed by NGT be incorporated into the rDCO.

6.8.6. In the event that development consent is granted, the use of CA and other relevant powers under the rDCO would not result in any serious detriment to NGT's undertaking. The ExA considers that the loss of the relevant rights would be necessary for the purpose of carrying out the proposed development. The SoS can be satisfied that the prescribed tests set out in s127 and s138 PA2008 would be met.

National Grid Electricity Transmission Plc

6.8.7. The applicant is seeking temporary and permanent rights over several plots containing NGET infrastructure, including parcels 1/4, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1/12, 1/13, 1/15, 1/16, 1/17, 1/18, 1/19, 1/20, 1/21, 1/22, 2/1, 2/2, 2/5, 2/6, 2/7, 2/8, 2/9, 2/10, 2/11, 2/16, 2/17, 2/18, 2/19, 2/20, 2/21, 2/22, 2/23, 2/24, 2/25, 2/26, 2/28, 2/29, 2/31, 2/37, 2/38, 2/40, 2/41, 2/42, 2/43, 2/44, 2/47, 3/1, 3/4, 3/5, 3/6, 3/11, 3/12, 3/13, 4/1, 4/8, 4/9, 4/14, 4/16, 5/1, 6/2, 6/3, 11/5, 11/22, 11/23, 13/3, 13/4, 13/19, 13/20, 13/21, 19/2, 19/7, 19/8, 19/23, 19/25, 19/36, 19/49, 25/7, 25/8, 25/15, 26/7, 26/8, 27/39, 28/1, 29/7, 29/8, 29/12, 31/21, 32/1, 32/2, 32/3, 32/4, 32/5, 32/6, 32/7, 32/8, 32/9, 32/24, 32/26, 32/31, 32/36, 32/37, 34/4, 34/5, 34/6, and 37/1.

6.8.8. NGET submitted a RR [RR-152] and WR [REP1-096] raising a number of concerns relating to the potential for the proposed development to interface with existing NGET infrastructure, and with planned future infrastructure upgrades, in particular the upgrade of high voltage electricity transmission lines in the Staythorpe area, known as the SCRE/ WRRE Project. It sought the inclusion of protective provisions within the dDCO to ensure that NGET's existing and future assets and interests were adequately protected.

6.8.9. NGET considers that the applicant should incorporate its standard set of protective provisions, which it considers to be well-precedented and which it states have been used in almost all DCOs (in which NGET has an interest).

6.8.10. In addition, NGET requested a clause in the protective provisions restricting the use of CA powers such that the applicant would only be able to exercise CA powers with NGET's consent (paragraph 6). NGET's position was that this is necessary in order for NGET to be able to adequately co-ordinate the implementation of connections to its high voltage transmission network from different individual applicants, which forms part of its statutory duties [REP6-074]. NGET considers this to be a well-established restriction, highlighting

the recent made DCOs for Springwell Solar Farm, Fenwick Solar Farm, and the Rampion 2 Offshore Wind Farm as including this type of restriction.

6.8.11. NGET and the applicant have engaged throughout the examination. However, NGET's final submission [REP6-074], and the final signed SoCG [AS-088] contain a number of areas of disagreement on the final form of the PP sought. These are summarised in Appendix 1 of the final signed SoCG. Furthermore, there remains disagreement with regards to the requested restriction on the use of CA powers.

6.8.12. In particular, the applicant has highlighted its concerns that NGET has applied for a compulsory purchase order (CPO) in respect of the SCRE/ WRRE project, which includes land located within the Order limits for the proposed development [AS-088]. For this reason, the applicant considers that it cannot accept a limitation on its powers of compulsory acquisition. The applicant considers that this could lead to the potential for delivery of the proposed development to be frustrated by NGET without justification, and that such a restriction could create an unbalanced position in which NGET could exercise the powers under its CPO without any consultation or consent from the applicant.

6.8.13. In addition, the applicant states that NGET's CPO would include access rights through the Order land which would not be compatible with the design of the proposed development, reducing its output if implemented [AS-088]. In view of this, the applicant considers that bespoke protective provisions are required, citing PINS guidance "Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects" April 2024, on protective provisions, which advises that preferred forms of protective provision from SUs should be adapted as necessary.

6.8.14. NGET has stated in response that it considers its proposed restriction to be appropriately balanced [REP6-074], citing paragraph 13(2) of its preferred form of PP which provides that wherever NGET's consent, agreement or approval is required, it must not be unreasonably withheld or delayed, with an eventual recourse to arbitration if necessary.

6.8.15. Various additional areas of disagreement relating in the main to commercial/ financial matters, including the degree of insurance and security in relation to NGET apparatus and the nature of cost claims were outstanding. NGET also sought specific provisions regarding interactions with proposed NGET projects. On this latter point the applicant referred to the fact that these provisions appear one sided and that it had sought to engage NGET in meaningful discussions on this matter for some time.

6.8.16. In its final statement [AS-091] the applicant considers that its form of protective provisions included in part 7 of schedule 13 of the dDCO submitted at D6 would represent a realistic and workable framework for the protection of NGET, without compromising the delivery of the proposed development. In the event that no further agreement is reached between the applicant and NGET, the applicant requested that these protective provisions are included

in the Order were it to be made, unless further amendments are agreed before the end of the recommendation period.

ExA's consideration

6.8.17. The ExA has considered the areas of disagreement between the parties, as detailed in Appendix 1 of the final signed SoCG [AS-088]. A key area of disagreement relates to NGET's proposed PP relating to restrictions to compulsory acquisition over NGET's land, apparatus and interests, which would mean that the applicant would only be able to exercise CA powers with NGET's consent. This would be subject to the provisions in NGET's form of PP (at paragraph 13(2)), which would provide that wherever NGET's consent, agreement or approval is required, it must not be unreasonably withheld or delayed, and any dispute as to reasonableness may be referred to arbitration. NGET has provided evidence that these provisions are well-precedented. On this basis, noting the sensitivity of NGET infrastructure within and in proximity to the Order limits, the ExA accepts the arguments put forward by NGET for the need for this restriction.

6.8.18. With regard to the other areas of disagreement, the ExA notes in particular NGETs request for provisions clarifying the interaction with proposed NGET projects, including the requirement that the undertaker must use 'reasonable endeavours' to avoid conflict arising between the projects. In the context of the SCRE/WRRE project, the ExA considers that it is not unreasonable that NGET should seek to protect their interests in this way. The ExA is therefore persuaded that NGET's request for this interaction, and the reasons therein, is reasonable.

6.8.19. The ExA acknowledges the applicant's concerns with regards to what it considers to be a limitation on its powers and the potential for the delivery of the proposed development to be frustrated. In addition, the applicant states that NGET's restriction would ultimately mean a reduction in output for the proposed development. However, the ExA has not seen any evidence to substantiate this point.

6.8.20. Having considered the respective positions of NGET and the applicant, the ExA therefore considers that NGET's proposed form of PP would be reasonable and recommends that NGET's preferred form of PP is included within the recommended (r)DCO. On this basis the ExA is also persuaded that the powers sought by the applicant would be necessary for delivery of the proposed development.

6.8.21. Therefore, if the SoS was minded to grant development consent, they could be satisfied that the powers sought by the applicant would be necessary and that the proposed development could be delivered without serious detriment to NGET's undertaking. The tests in s127 and s138 of PA2008 would therefore be met.

Trent Valley Internal Drainage Board

6.8.22. TVIDB outlined its initial position in its written representation [REP2-134]. Discussions regarding PPs progressed during the examination and

agreement was noted as being reached in the final SoCG with the applicant [REP6-059]. At the end of the examination, TVIDB confirmed that it held no further objections [AS-085] and the agreed form of PPs were included in the applicant's final DCO [REP6-004].

6.8.23. As the final SoCG was not signed, the ExA has considered whether the tests in s127 and s138 of the PA2008 have been met. Having considered the submissions put forward, the ExA considers that TVIDB's agreed form of PP would be reasonable and supports the inclusion of TVIDB's agreed PP within the recommended rDCO.

6.8.24. The ExA considers that if the SoS was minded to grant development consent, they could be satisfied that the powers sought by the applicant would be necessary and that the proposed development could be delivered without serious detriment to TVIDB's undertaking. The tests in s127 and s138 PA2008 would therefore be met.

RWE

6.8.25. RWE has rights over land within the Order limits that relate to the operation and maintenance of the Staythorpe Power Station. RWE set out in its written representation [REP1-104] that it is currently exploring options to retrofit the power station with carbon capture technology to provide approximately 1.5 gigawatts of decarbonised electricity. It therefore needs to be satisfied that the proposed development would not have a detrimental impact on its rights to ensure the continued safety, operation and maintenance of Staythorpe Power Station. RWE noted that as drafted, the dDCO has the ability to affect RWE's rights to the detriment to its functions as a SU.

6.8.26. In the initial SoCG's with RWE [REP1-057], [REP2-100], the applicant acknowledged the interface of the proposed development with RWE's interests, specifically that the operation of article 33(b) of the dDCO would permit the applicant to interference with rights belonging to RWE in plot 1/10. However, this would be subject to the provisions of schedule 13 part 1 which contains PPs that would benefit RWE. The applicant also noted that it had explained to RWE that the exercise of RWE's existing rights of access over the Order land would not be prevented. Specifically, the PP would ensure that the access to RWE's apparatus is maintained at all times.

6.8.27. The applicant set out that it had provided an undertaking on 6 January 2026 for costs, as requested by RWE. The applicant was also engaging with RWE to resolve any concerns as regards to the form of PPs contained in part 1 of schedule 13 of the dDCO, noting that RWE had not set out or requested any alternative form of PPs.

6.8.28. In subsequent correspondence between the applicant and RWE [REP3-081], RWE explained that it had concerns surrounding the definition of "apparatus" as included in the PPs. During the examination, the applicant's solicitor engaged with RWE's solicitor to agree an appropriate way forward. A unilateral undertaking (UU) was issued by the applicant to RWE on 11 February 2026 to ensure that agreement was reached in relation to the

definition of "apparatus", and to give assurance that RWE's equipment would be protected by the PPs.

6.8.29. However, by the close of the examination, the applicant confirmed that RWE had yet to make any comment on the unilateral undertaking issued by the applicant [REP6-064].

ExA's consideration

6.8.30. The ExA notes that RWE's concerns are related to the definition of "apparatus" as included within the PPs, and that the applicant has confirmed that its suggested form of PPs would ensure that the access to RWE's apparatus is maintained at all times. On this basis, as well as the available evidence put forward, the ExA is satisfied that s127 and s138 PA2008 would be met.

6.9. HUMAN RIGHTS ACT 1998 AND EQUALITY ACT 2010 CONSIDERATIONS

6.9.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into UK law. Article 6 (right to a fair trial), Article 8 (respect for private and family life, home and correspondence), and Article 1 (protection of property) of the First Protocol are engaged.

6.9.2. In relation to Article 6, the ExA accepts that appropriate consultation has taken place before and during the examination and that there has been the opportunity to make representations during the preparation of the application. Owners of land have been consulted. There has also been the opportunity to make representations during the course of the examination. At CAH1 the ExA provided an opportunity for all APs who wished to be heard, an opportunity to be heard fully, fairly, and in public. The ExA also notes that should the Order be made, there would be further opportunities for APs to challenge the Order in the High Court. The ExA considers this to be sufficient to meet the obligations set out in Article 6.

6.9.3. With regards to Article 8, the proposed development would not require the acquisition of any residential properties. Where residential properties would be located near or adjacent to the Order limits, the ExA considers that the design of the proposed development and the mitigation measures set out by the applicant mean that any effects on those properties would be minimal. The ExA is therefore satisfied that any infringement of the ECHR rights of those whose interests in the land might be affected by the exercise of powers of CA would be proportionate and legitimate, would be in the public interest and would be in accordance with national and European law.

6.9.4. With regards to Article 1 of the first protocol, the applicant acknowledges in the SoR [REP6-009] that the Order has the potential to infringe the rights of affected parties and acknowledges the need to strike a balance between the rights of the individual and the interest of the public. The applicant has sought to minimise the amount of land affected and includes suitable provisions for the payment of compensation in the dDCO. With regards to the affected

easement rights in respect of plots 15/16, 15/17, and 16/1, and their importance for the potential future connection of Mr Gill's property to mains services, the ExA is satisfied that the applicant's provision of a service route corridor for the future installation of any such services is a reasonable and viable means of ensuring that services can be connected to the property.

6.9.5. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The ExA has had regard to this duty throughout the examination and in its consideration of the issues raised in this recommendation report.

6.9.6. As set out above, the ExA has found that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. The ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate, and justified in the public interest. As such, the ExA concludes that the CA and TP powers sought are compatible with the Human Rights Act 1998 and the Equalities Act 2010.

6.10. CONCLUSIONS

6.10.1. Having considered all of the material submitted into the examination, the ExA has reached the following conclusions:

- the application site has been appropriately selected
- all reasonable alternatives to CA have been explored
- the applicant would have access to the necessary funds for the proposed development, and the rDCO provides an appropriate and clear mechanism to guarantee the availability of these funds
- there is a need to secure the land rights required to construct, operate, maintain and decommission the proposed development within a reasonable timeframe, and the proposed development would represent a significant public benefit to weigh in the balance
- the private loss to those affected would be mitigated through the selection of the land, as well as the minimisation of the extent of the rights and interests sought through CA powers, and where relevant, PPs in favour of those protected
- in all cases relating to individual objections and issues, CA and TP is justified to enable implementation of the proposed development. There is a compelling case in the public interest for the land and rights to be acquired compulsorily
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 and the CA guidance
- the powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA guidance.

6.10.2. Considering all of the above, the ExA considers that there is a compelling case in the public interest for the CA and TP powers sought.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application draft Development Consent Order (dDCO) [APP-007] and the Explanatory Memorandum (EM) [APP-009] were submitted by the applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the examination with the final version of the dDCO submitted by the applicant at deadline 6 being [REP6-004] and the EM being [REP6-007]. The final version of the dDCO submitted by the applicant did not include the set of protective provisions agreed with National Electricity Distribution (East Midlands) plc in an additional submission [AS-093].

7.1.2. The EM explains the purpose and effect of each article of, and schedules to, the dDCO and why they would be required. The EM also identifies and explains departures from the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It also makes reference to where the drafting has been taken from wording for other orders made under the Planning Act 2008 (PA2008). The original application dDCO and subsequent iterations are in the form of a statutory instrument as required by section (s) 117(4) of the PA2008.

7.1.3. This chapter is structured under the following headings:

- the Order as applied for
- changes during examination
- Examining Authority's (ExA) consideration of outstanding DCO matters
- ExA's proposed changes

7.1.4. The recommended (r) DCO is set out in Appendix A of this recommendation report.

7.1.5. Unless otherwise stated, all references to the dDCO and EM in this chapter are to the applicant's final dDCO [REP6-004] and EM [REP6-007].

7.2. THE ORDER AS APPLIED FOR

7.2.1. This section records the structure of the dDCO as applied for as follows:

- Part 1: Preliminary
    - Articles 1 and 2 set out the name of the Order, when it comes into force and the meaning of various terms used in the Order
- Part 2: Principal Powers
    - Articles 3, 4 and 5 provide the principal powers to construct, maintain and operate the proposed development
    - Articles 6 and 7 set out who has the benefit of the powers of the Order and how those powers can be transferred

- Article 8 provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation
- Article 9 provides a defence to proceedings brought in relation to certain nuisances

- Part 3: Streets
  - Articles 10 to 18 provide for the execution of works in or under streets, rights of way and related matters
- Part 4: Supplemental Powers
  - Articles 19 to 21 set out three supplemental powers relating to discharge of water, protective works to buildings and the authority to survey and investigate the land
- Part 5: Powers of acquisition
  - Articles 22 to 36 provide for compulsory acquisition of land and land rights, and related matters
- Part 6: Miscellaneous and general
  - Articles 37 to 50 include various general provisions in relation to the Order

7.2.2. There are then 13 schedules containing information referred to in the articles as follows:

- Schedule 1: the description of the proposed development.
- Schedule 2: the requirements that apply to the proposed development (that is, the controls that apply to the implementation of the Order)
- Schedules 3 to 7: matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to traffic regulation measures
- Schedule 8: details of land in which only new rights may be acquired
- Schedule 9: amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order
- Schedule 10: details of hedgerows to be removed.
- Schedule 11: the documents and plans to be certified by the Secretary of State (SoS)
- Schedule 12: arbitration rules that apply to most arbitrations in connection with the Order
- Schedule 13: provisions for the protection of statutory undertakers and their apparatus

7.3. CHANGES DURING EXAMINATION

7.3.1. Discussions on the provisions of the dDCO were undertaken throughout the examination and resulted in a number of changes. These generally involved resolving inconsistencies, providing clarification and certainty in drafting and

updates resulting from agreement reached between the applicant and interested parties (IP) in discussions during the examination.

7.3.2. The numerous small alterations, typographical changes, corrections and drafting improvements in each successive version of the dDCO are set out in the final version of the applicant's Schedule of Changes to the dDCO [REP6-056]. The ExA accepts that such changes are necessary, are not the subject of outstanding disagreements and do not materially affect the delivery of or controls over the proposed development. They are therefore not discussed here.

7.3.3. The notable changes made to the dDCO during the examination, and the reasons for them, are summarised below.

- Deadline 1 [REP1-005]
    - Article 9 (defence to proceedings in respect of statutory nuisance) amended to clarify that the standard defence to statutory noise nuisance (contained in the majority of made Orders) also applies to decommissioning, not only construction and maintenance
    - Amendments to article 22 (compulsory acquisition of land) and schedule 8 to reflect changes in land ownership
    - Amendments to numerous requirements to require the relevant authority to consult with the Environment Agency (EA) before approving the applicable document
    - Schedule 2 (requirements), requirement 11 amended to remove the word "substantially" at the request of Historic England due to concerns that the word potentially introduces ambiguity and risk of dispute at post-DCO approval stage
    - Requirement 12 (construction environmental management plan) additional wording to control permitted preliminary works at the suggestion of the EA
    - Requirement 14 (construction traffic management plan) the addition of National Highways (NH) as a consultee for construction traffic management plans
    - Requirement 20 (soil management) the addition of Natural England as a consultee for soil management plans
    - Schedule 13, part 8 includes a set of protective provisions (PP) in favour of National Grid Electricity Transmission plc
- Deadline 2 [REP2-005]
    - Alterations to the definitions of "authorised development" and "Order land"
    - Article 10 (street works) amended to delete the provisions relating to the Nottinghamshire County Council (NCC) permit scheme, which moved to a new article 11 (application of the permit scheme)
    - Deletion of article 15 (use of private roads for construction)
    - Amendment to article 16 (access to works) including addition of a requirement for the undertaker to restore any temporary access created to the reasonable satisfaction of the street authority

- Article 17 (agreements with street authorities) amended to allow agreements between the street authority and the undertaker in relation to article 16 (access to works)
- Article 18 (traffic regulation measures) amended to include sub-paragraph (b), which requires the undertaker to erect a notice at each end of the affected road before utilising the article 18 powers
- Requirement 8 (landscape and ecological management plan and biodiversity design strategy) amended to include an obligation on the applicant to submit a biodiversity design strategy as well as a landscape and ecological management plan (LEMP) to include a number of prescribed details
- Requirement 10 (surface and foul water drainage) amended to specify that the approving authority is NCC, in consultation with Newark and Sherwood District Council (NSDC)
- Amendments to requirement 11 (archaeology) to address comments of the ExA
- Amendments to requirement 12 (construction environmental management plan) to include NCC and the EA as consultees
- Requirement 15 (operational noise) amended to include reference to specific noise limits
- Requirement 21 (community liaison) amended to specify that the community liaison plan is to be implemented as approved prior to the commencement of the authorised development
- Requirement 22 (glint and glare) amended to replace the requirement to provide a glint and glare assessment with the requirement to provide a glint and glare mitigation strategy for the relevant phase
- A new requirement 24 (grid connection optionality) added to require the selection of the proposed grid connection option and for this to be notified to the planning authority prior to those works commencing

- Deadline 3 [REP3-004]

  - Amendments to the article 1 definition of “permitted preliminary works” to delete some activities and to include vegetation removal
  - Article 9 (defence to proceedings in respect of statutory nuisance) restructured and reference to section 65 of the Control of Pollution Act 1974 deleted
  - Amendments to article 25 (private rights over land) to seek to minimise the interference with private rights over land subject to compulsory acquisition or temporary possession
  - Deletion of article 50 (Crown land)
  - Schedule 2 (requirements) restructured into two parts: part 1 sets out the requirements and part 2 sets out the procedure for the discharge of requirements. As a result, schedule 14 has been deleted
  - Requirement 8 (landscape and ecological management plan and biodiversity design strategy) amended to ensure that works would be undertaken in accordance with the outline LEMP
  - Requirement 11 (archaeology) further amended to reflect feedback from NCC
  - Requirement 14 (construction traffic management plan) amended to provide clarity over implementation

- Requirement 15 (operational noise) wholly replaced to provide greater clarity over implementation
- Schedule 2 part 2 (procedure for discharge of requirements) amendments made including to clarify the procedure required for approval of documents and to amend the time period for the discharge of requirements
- Schedule 13 (protective provisions) part 4 of the protective provisions (for the protection of the environment agency) has been deleted

- Deadline 4 [REP4-005]

  - Amendments to article 8 (application and modification of statutory provisions) to reflect discussion with the EA
  - Requirement 11 (archaeology) amended to reflect discussion with NCC
  - Requirement 12 (construction environmental management plan) amended to reflect discussion with the EA
  - Requirement 15 (operational noise) amended to add greater precision
  - Schedule 5, part 3 (public rights of way to be permanently closed and diverted) amended to reflect updates to the public rights of way and permissive routes plan to make the diversions more clearly identifiable
  - Schedule 13 (protective provisions), part 6 amended to reflect the agreed position with Cadent Gas Ltd

- Deadline 5 [REP5-005]

  - Article 39 (felling or lopping of trees and removal of hedgerows) amendments including making this subject to article 40 (trees subject to tree preservation orders)
  - Requirement 8 (landscape and ecological management plan and biodiversity design strategy) amended to reflect revisions to biodiversity net gain calculations

- Deadline 6 [REP6-004]

  - Amendments to schedule 13 (protective provisions) part 3 for the protection of railway interests to reflect discussions with Network Rail
  - Amendments to schedule 13 (protective provisions) part 4 for the protection of National Highways to reflect agreement reached with National Highways
  - Amendments to schedule 13 (protective provisions) part 5 for the protection of drainage authorities to reflect agreement reached with the Trent Valley Internal Drainage Board
  - Amendments to schedule 13 (protective provisions) part 7 for the protection of National Grid Electricity Transmission plc as electricity undertaker to reflect discussions with National Grid Electricity Transmission plc
  - Addition of schedule 13 (protective provisions) part 8 for the protection of National Gas Transmission plc following discussions with the applicant

7.3.4. An additional submission was received from the applicant providing the agreed protective provisions for the benefit of National Grid Electricity

Distribution (East Midlands) plc (NGED) [AS-093], which were agreed with NGED [AS-095], to be included as schedule 13 (protective provisions) part 9. As this change was received after the submission of the applicant's final dDCO [REP6-004], it has been included in the ExA's rDCO.

7.4. EXA'S CONSIDERATION OF OUTSTANDING DCO MATTERS

7.4.1. This section considers those parts of the dDCO [REP6-004] where objections or substantive matters raised by the ExA or IPs remained outstanding or still under consideration at the close of the examination. Hence, provisions relating to the following are considered further in this section:

- Article 48 (disregard of certain improvements) [REP4-060]
- Article 49 (set off for enhancement in value of retained land) [REP5-044]
- Schedule 2 part 1 (requirements): NCC seeking a new requirement [REP6-066]
- Schedule 2 part 1 (requirements): NH seeking to be an approver for the discharge of requirements 5,14,15 and 22 [REP6-076]
- Schedule 2 part 2: NCC and NSDC proposals regarding timescales and fees for the discharge of requirements and written approvals related to them [REP6-066] and [REP6-042] respectively
- Protective provisions (PP): for the benefit of National Grid Electricity Transmission plc, Network Rail Infrastructure Ltd and National Gas Transmission plc (NGT)
- Schedule 2 part 1 (requirements): EA seeking amendment of 'substantially in accordance with' to 'in accordance with the principles set out in' [REP6-067]
- Article 50 (inconsistent planning permissions) [REP5-044]

Land compensation

7.4.2. Article 48 (disregard of certain improvements) and Article 49 (set off for enhancement in value of retained etc) both relate to how a valuation would be made for loss of land rights in the event that loss would be through the making of the Order.

7.4.3. The ExA finds that article 48 creates a bespoke provision which mirrors other legislation that does not apply to DCOs to, in effect, apply the principle of that legislation to this DCO, and that article 49(3) has the effect of modifying other legislation that relates to such matters.

7.4.4. With respect to article 48 the applicant explained [REP4-060] in response to the ExA's second written question (ExQ2) Q2.2.6, that to achieve the same meaning based on the ExA's suggestion of simply bringing into effect Section 4 of the Acquisition of Land Act 1981, would require bespoke drafting for which it was not aware of there being a precedent. The applicant stated that it strongly preferred the retention of the current article 48 wording, which it considers has significant precedent and makes clear its purpose and effect on the face of the dDCO.

7.4.5. With respect to article 49, in its response to the ExA's proposed deletion, the applicant [REP5-044] cited The Rampion 2 Offshore Wind Farm Order 2025 (Rampion 2 DCO) as relevant precedent which contains an equivalent article to article 49, in its case article 54. The Rampion 2 DCO was made on 4 April 2025 after sections 6A-6E of the Land Compensation Act 1961 had been brought into effect by the Neighbourhood Planning Act 2017 to align compensation payable with the 'no scheme principle'.

7.4.6. To reach a conclusion on the applicant's proposed land compensation articles the ExA takes account of:

- that modification to relevant legislation is permitted by the PA2008
- the applicant's responses to questions and suggestions, including relevant precedent
- the absence of any disagreement raised by IPs
- that any commercial impact would likely be consistent with the government's energy supply system objectives, which include affordability, as set out in the Overarching National Policy Statement for Energy (EN-1) paragraph 2.3.3

7.4.7. In summary the ExA sees no reason to disagree with the applicant's final dDCO with regard to the retention of Articles 48 and 49.

Highways

7.4.8. For those highways matters discussed in this recommendation report at section 3.14, there remained areas of disagreement between the applicant and NH and the applicant and NCC.

7.4.9. With regard to those matters, and for the reasons explained in section 3.14, the ExA sees no reason to recommend changes to the applicant's final dDCO [REP6-004].

7.4.10. However, in relation to glint and glare, as discussed in section 3.16, and with regard to requirement 22, the ExA accepts the wording proposed by NH for it to be an approver of the glint and glare mitigation strategy for the reasons explained in that section.

7.4.11. This is included in the ExA's rDCO at Appendix A and the ExA recognises that no party has had the opportunity to comment on this recommendation so the SoS may wish to consult on the matter.

Timescales

7.4.12. The applicant's proposals on timescales are set out under paragraph 2 'applications made under provisions of this Order' in schedule 2, part 2 'procedure for discharge of requirements' in its final dDCO [REP6-004].

7.4.13. These propose that the relevant authority must give notice to the undertaker of its decision on the application within eight weeks, unless it requires further information, which has the effect of resetting the time to eight weeks from the

provision of that further information, or the parties may agree in writing extensions to these periods.

7.4.14. In the final signed statement of common ground (SoCG) with NSDC [REP6-042] and NCC [REP6-040], the relevant authorities for the discharge of requirements and other written approvals, both noted that the One Earth draft DCO included a twelve week period and whilst they did not consider that period sufficient it was longer than the ten weeks for the proposed development that had been proposed by the applicant in an earlier version of its dDCO [REP1-005]. They both considered that a default period equating to major development requiring an environmental impact assessment (EIA) for a planning application of sixteen weeks would be more appropriate.

7.4.15. The applicant, in its final signed SoCG with NSDC [REP6-042], noted that the Helios made DCO, made in December 2025, includes a period of eight weeks, which reflects the urgent need for the project.

7.4.16. The ExA considers that the discharging of a requirement of a DCO to be very different to the determination of a planning application for major development, in itself requiring an EIA, and so gives little weight to the NCC and NSDC proposal of sixteen weeks.

7.4.17. On this matter the ExA is guided by more recent precedent in the form of The Fenwick Solar Farm Order 2026 made 18 February 2026 (the Fenwick Order). This also sets a timescale of 8 weeks at schedule 15(2). The ExA considers that the applicant's proposals, though drafted slightly differently, have materially the same meaning. Hence, on the matter of timescales for the discharge of requirements and related written approvals, the ExA sees no reason to disagree with the applicant's proposal of eight weeks as the default timescale.

Fees

7.4.18. The applicant's proposals on fees are set out under paragraph 5 'fees', in schedule 2, part 2 'procedure for discharge of requirements', in its final dDCO [REP6-004]. These include £2,535 for the discharge of the numbered requirements, including technical approval of works to any highway made in accordance with the outline construction traffic management plan (oCTMP).

7.4.19. In its final submission [REP6-066] NCC requested that the fee payable should reflect the fees which are charged by the Council for technical approval equivalent to s278 or s184 of the Highways Act 1980. It considered that this approach had been agreed in relation to other NSIPs in the region, as the oCTMP for the recently consented Springwell Solar Farm submitted at deadline 4 of that examination stated: "The Applicant will reimburse the highway authorities for the technical approval process at the time the applications are made, in line with costs for similar Section 278 or Section 184 applications made under the Highways Act".

7.4.20. In the final signed SoCG with NSDC [REP6-042], NSDC reaffirmed its view that the fees associated with the discharge of requirements were considered

to be insufficient and did not reflect a realistic output of officer time. NSDC referred to a worked example and calculated this as £5,145 which it considered would represent a conservative assessment of time spent.

7.4.21. In the final signed SoCG with NCC [REP6-040], the applicant maintained that incorporating a fee mechanism equivalent to the s278 or s184 processes into the dDCO would not be appropriate, nor consistent with the approach taken in recently made Orders. The applicant considered the fee provisions already included in the dDCO to be appropriate and proportionate.

7.4.22. The applicant in its final signed SoCG with NSDC [REP6-042] noted that the Helios DCO includes fees from the Town and Country Planning Act regime to discharge planning conditions, and so this precedent would suggest the SoS considers such an approach would be appropriate.

7.4.23. The ExA finds that the fee arrangements in the Springwell Solar Farm made DCO are very similar to those to be found in the applicant's final dDCO, for example £2,578 for the discharge of the numbered requirements. However, the ExA finds that no reference is made to technical highways approvals, so in terms of the DCO the ExA considers the applicant's position not to be materially different. That is to say, neither the made Springwell DCO nor the applicant's dDCO bring into effect processes set out in the Highways Act in relation to fees for technical highways approvals.

7.4.24. In terms of the most recently made Order available to the ExA, the North Falls Offshore Wind Farm Order 2026 made 14 May 2026 (North Falls made Order) addresses fees for the discharge of requirements as follows:

7.4.25. "Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations unless a bespoke arrangement has been agreed between the Applicant and discharging authority and legally secured."

7.4.26. The ExA finds this approach has recent precedent and relies upon existing relevant regulation, unless an alternative legally binding agreement on such matters has been reached by the parties. Therefore, the ExA recommends that schedule 2 part 2 (5) in the applicant's final dDCO [REP6-004] is replaced with the wording in the North Falls made Order. This is set out in the ExA's rDCO at Appendix A.

Protection of statutory undertaker land rights and apparatus

7.4.27. By the close of the examination protective provisions included in the applicant's final dDCO [REP6-004], where they had been requested, had been agreed with the relevant statutory undertakers, with the exception of:

- National Grid Electricity Transmission plc (NGET)

- Network Rail Infrastructure Ltd (NR)
- National Gas Transmission plc (NGT)

NGET

7.4.28. Based on the reasoning set out in detail in chapter 6, the ExA concludes that the NGET position is well supported by recent precedent and sees no reason to disagree with its proposal to include its preferred PP in the rDCO.

7.4.29. Hence the ExA recommends replacement of the applicant's version of PP for the protection of NGET with the version provided by NGET [REP6-074], as set out in its rDCO (Appendix A).

NR

7.4.30. NR set out in their RR [RR-155] that as the proposed development would involve works in proximity to the railway, despite it having no apparatus within the Order limits, the proposed works might interfere with the safe and efficient operation of the railway. Therefore, NR required adequate protective provisions and/ or requirements to be included within the DCO.

7.4.31. The dDCO submitted with the application contained PP for the protection of railway interests at schedule 13 part 3 [APP-007], with the applicant noting in the deadline 1 SoCG that these were in line with NR standard protective provisions [REP1-059].

7.4.32. With respect to schedule 13 part 3 PP for the protection of railway interests, the dDCO version 7 [REP5-005] provided by the applicant was identical to that provided in version 1 [APP-007].

7.4.33. The final position with respect to NR were set out in the final signed SoCG [AS-090] between the applicant and NR. PP were not agreed, and NR's comments showed a number of commercial matters outstanding.

7.4.34. The applicant's position in summary was that, whilst it provided PP for the protection of railway interests as set out in schedule 13 part 3 of the dDCO [REP6-004], it considered NR's position on liabilities and liability caps, detailed in NR's standard PP, to be unreasonable given there would be no railway interests within the Order limits of the proposed development.

7.4.35. The ExA finds that the applicant made extensive changes to the PP schedule 13 part 3 in its final dDCO [REP6-004], including the introduction of liability caps at £25,000,000.

7.4.36. The ExA finds that the applicant presented no evidence to explain why it had changed its position on the acceptability of the PP as set out in all the previous versions of its dDCO. Furthermore, the ExA finds no evidence that showed that the degree of interaction between NR and the proposed development had changed during the course of the examination which might have caused the applicant or NR to change their positions.

7.4.37. The ExA finds that the proximity of the railway to solar farm development, with no NR land or apparatus within Order limits is precedented, for example 'The Gate Burton Energy Park Order 2024' which includes PP for the protection of railway interests with no liability caps.

7.4.38. Hence, the ExA finds no reason to disagree with the applicant's original proposals for the protection of railway interests and recommends replacement of the applicant's version of PP for the protection of railway interests in its final dDCO [REP6-004] with the version provided by the applicant [APP-007], as set out in the ExA's rDCO (Appendix A).

NGT

7.4.39. The potential for the proposed development to affect NGT was raised by the ExA in its ExQ2 Q10.2.5 [PD-011]. In its final submission [REP6-069], NGT stated that its position remained that there was the potential for the proposed development to interfere with its apparatus, particularly to cathodic protective systems, as detailed in its response to this question [REP4-076]. Therefore, the need for both consultation with, and approval of assessments and works by NGT, meant that it would be appropriate to include NGT's PP in the dDCO. It appended a copy of these to its final submission [REP6-069].

7.4.40. The applicant set out its position in its closing statement [REP6-064]. It considered that the form of PP included in its final dDCO [REP6-004] would be proportionate to the impact of the proposed development on NGT's undertaking. In the same submission the applicant notes that the nearest NGT asset, a high-pressure pipeline, is about 700m from the Order limits. The applicant identifies that there are provisions within NGT's PP that it considers irrelevant to the nature of the interface with NGT.

7.4.41. The ExA finds that NGT's position is supported by relevant industry guidance on the potential interference, and despite the relatively large distances involved it agrees with NGT's position, noting that the guidance extends to separation distances of up to 1000m.

7.4.42. Hence, the ExA recommends the replacement of the applicant's version of PP for the protection of NGT, as set out at schedule 13 part 8, with the version provided by NGT [REP6-069]. This is set out in the rDCO (Appendix A).

7.4.43. The ExA recognises that neither party had the opportunity to comment on this, given the lateness of the identification of the issue, hence the SoS may wish to consult on the matter.

Other matters

7.4.44. The use of the term 'substantially in accordance with' in the context of approving a phase specific management plan based on an outline management plan, is extremely well precedented in made Orders for solar farm NSIPs. This includes, for example, the Fenwick Order. The ExA considers the applicant's position is consistent with widespread precedent and sees no reason to disagree with the applicant's position on this matter.

7.4.45. With regard to article 50 ‘Inconsistent planning permissions’ the applicant sets out its reasons for retaining this [REP5-044], where it refers to the Lower Thames Crossing Order 2025 as precedent, and also the recommendations made by the Nuclear regulatory review. Despite these, which the ExA considers to be of little relevance, the ExA notes that where such an article has been sought for solar farm NSIPs it has consistently been struck out by the SoS.

7.4.46. The reason given by the SoS for removing the article is that it is unnecessary. The applicant's submissions on this matter have not persuaded the ExA that this conclusion is incorrect or that the particular circumstances of this case are such that it is necessary to retain article 50 in this DCO.

7.4.47. Hence, the ExA has deleted article 50 in its rDCO at Appendix A.

7.5. EXA’S PROPOSED CHANGES

7.5.1. In consideration of the issues discussed above, the ExA recommends the changes set out in Table 10 should be made to the applicant’s final dDCO [REP6-004], in order to form the rDCO included at Appendix A.

Table 10: DCO provisions recommended to be changed

Provision	Recommendation	ExA’s reasons
Article 50 Inconsistent planning permissions	Deletion of the entire article	See paragraph 7.4.47
SCHEDULE 2 — REQUIREMENTS PART 1 — Requirement 22 Glint and glare mitigation strategy	Add NH as an approver	See section 3.16
SCHEDULE 2 — REQUIREMENTS PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS- paragraph 5 Fees	Replace with The North Falls Offshore Wind Farm Order 2026 made 14 May 2026 SCHEDULE 16 PROCEDURE FOR DISCHARGE OF REQUIREMENTS- paragraph 5 Fees	See paragraphs 7.4.18 to 7.4.26
SCHEDULE 13 PART 3 — FOR THE PROTECTION OF RAILWAY INTERESTS	Replace with PP provided by NR	See paragraphs 7.4.31 to 7.4.39
SCHEDULE 13 PART 7 — FOR THE PROTECTION OF	Replace with PP provided by NGET	See chapter 6

Provision	Recommendation	ExA's reasons
NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER		
SCHEDULE 13 PART 8 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER	Replace with PP provided by NGT	See paragraphs 7.4.40 to 7.4.43
SCHEDULE 13 PART 9 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER	Add the PP agreed by the parties [AS-093]	See paragraph 7.3.4

7.6. CONCLUSIONS

7.6.1. The ExA acknowledges the issues raised above by the parties. The ExA has amended the dDCO, in its rDCO, as set out in Appendix A, where this has been considered necessary. The ExA is content with the remainder of the dDCO in its final revision [REP6-004].

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 for Energy Security and Net Zero (SoS).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. In chapter 3 of this recommendation report the ExA referred to the urgent need for low carbon energy, as established through the National Policy Statements (NPS). In relation to section(s)104 of the Planning Act 2008 (PA2008), the ExA concluded that making the recommended Development Consent Order (rDCO) would be in accordance with the Overarching NPS for Energy (EN-1), the NPS for Renewable Energy Infrastructure (EN-3) and where relevant, the NPS for Electricity Networks Infrastructure (EN-5).

8.2.2. In reaching its conclusions, the ExA has also had regard to the matters arising from the local impact reports (LIRs) produced by Nottinghamshire County Council [REP1-078] and Newark and Sherwood District Council [REP1-075].

8.2.3. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the determination, the ExA has examined matters relevant to Habitats Regulations Assessment to enable the SoS to discharge their duty. The ExA is satisfied that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites, with the mitigation measures to be secured through the DCO. The ExA finds that there is sufficient information for the SoS to enable them to undertake an appropriate assessment and to fulfil its duty under the requirements of the Habitats Regulations.

8.2.4. In terms of biodiversity, noting regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), the ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of EN-1 would be met. The ExA has also had due regard to conserving and enhancing biodiversity and fulfilling the biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.

8.2.5. With reference to designated heritage assets and in consideration of regulation 3 of the Decisions Regulations, the ExA has found the proposed development would result in negligible and therefore less than substantial harm to the settings of a number of designated heritage assets. However, those harms would be outweighed by the substantial public benefits from the provision of low carbon energy to meet the need identified in EN-1.

8.2.6. Therefore, in relation to the decision being made under s104 of the PA2008, the ExA concludes:

- that making the rDCO would be in accordance with EN-1, EN-3 and EN-5
- the proposal would be generally in accordance with the National Planning Policy Framework and the local development plan as a whole, and with other relevant policy, all of which has been considered in this report
- the proposed development would not result in any significant adverse effects that would outweigh its benefits and there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs
- with regard to all other matters and representations received, there are no relevant matters that would individually or collectively lead to a different recommendation to that below

8.2.7. The ExA has considered the case for the compulsory acquisition (CA) and temporary possession (TP) of land and rights in order to implement the proposed development and has concluded that:

- the application site has been appropriately selected
- all reasonable alternatives to CA have been explored
- the rDCO provides a clear mechanism whereby the necessary funding can be guaranteed
- there is a clear need for all the land included in the Book of Reference to be subject to CA or TP
- there is a need to secure the land and rights required to construct the proposed development within a reasonable timeframe, and the proposed development would represent a significant public benefit to weigh in the balance
- the private loss to those affected has been mitigated through the selection of the land; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected
- in all cases relating to individual objections and issues, the CA and TP are justified to enable the implementation of the proposed development
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance
- the powers sought in relation to statutory undertakers (SU) meet the conditions set out in s127 and s138 of the PA2008 and the Compulsory Acquisition Guidance

8.2.8. In considering the impacts of the proposed development on SU, chapter 6 of this recommendation report, the ExA noted that objections from some SU were outstanding at the close of the examination. Specifically, whilst protective provisions (PP) for the benefit of National Grid Electricity Transmission plc (NGET), National Gas Transmission (NGT) and Network Rail (NR), were included in the final dDCO, they had not been fully agreed. Negotiations with reference to a proposed unilateral undertaking in relation to RWE Generation Ltd (RWE) were also progressing. The ExA has included consideration of these matters in the recommendation.

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

8.2.10. The ExA has also had regard to the Public Sector Equality Duty (PSED) throughout the examination, including the methods by which hearings and site inspections were undertaken, and in producing this report and making this recommendation. 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 considers that there would be no breach of the PSED.

8.2.11. With regard to all other matters and representations received, the ExA has found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

8.2.12. The ExA's conclusions are subject to the provisions of the rDCO in Appendix A, which would secure the necessary mitigation and compensation measures. The ExA finds that the benefits of the proposed development would not be outweighed by the identified harm in terms of landscape and visual, agricultural land, traffic and transport, cultural heritage, noise and vibration and cumulative effects.

8.3. MATTERS FOR THE SECRETARY OF STATE

8.3.1. The ExA considers the evidence before the SoS at the close of the examination is sufficient for them to determine the application. As noted in Chapter 6, the ExA is satisfied that there are no impediments to the proposed development.

8.3.2. There are some other important areas that the ExA would like to draw to the SoS's attention. These are shown in Table 11 below.

Table 11: Matters for the Secretary of State

Matter	Reason	Section of report
The SoS may wish to consult NGT and the applicant on amended PP in favour of NGT, as set out in the rDCO at schedule 13 part 8.	The ExA considers that the case for NGT's preferred PP has been made.	Chapter 7: DCO

The SoS may wish to consult Newark and Sherwood District Council, Nottinghamshire County Council and the applicant on the approach to fees set out in schedule 2, part 2 of the rDCO.	As this matter has not been agreed, the rDCO includes alternative but precedented wording seeking to resolve the differences between the parties.	Chapter 7: DCO

8.4. RECOMMENDATION

8.4.1. For all of the above reasons, and in light of the ExA's findings and conclusions on important and relevant matters set out in this recommendation report, the ExA recommends that the SoS makes the Great North Road Solar and Biodiversity Park Order in the form recommended at Appendix A of this recommendation report.

APPENDIX A: THE RECOMMENDED DEVELOPMENT CONSENT ORDER

GREAT NORTH ROAD SOLAR PROJECT EN010162

STATUTORY INSTRUMENTS

202[X] No. 0000

INFRASTRUCTURE PLANNING

THE GREAT NORTH ROAD SOLAR AND BIODIVERSITY PARK ORDER 202[X]

Made - - - -	*202[X]*
Coming into force - -	*202[X]*

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by this Order
4. Operation of generating station
5. Power to maintain the authorised development
6. Benefit of the Order
7. Consent to transfer the benefit of the Order
8. Application and modification of statutory provisions
9. Defence to proceedings in respect of statutory nuisance

PART 3
STREETS

10. Street works
11. Application of the permit scheme
12. Power to alter layout, etc., of streets
13. Construction and maintenance of altered streets
14. Temporary prohibition, restriction and diversion of use of streets and public rights of way
15. Permanent closure of public rights of way
16. Access to works
17. Agreements with street authorities
18. Traffic regulation measures

PART 4
SUPPLEMENTAL POWERS

19. Discharge of water
20. Protective works to buildings
21. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION

22. Compulsory acquisition of land
23. Time limit for exercise of authority to acquire land compulsorily or to take land temporarily
24. Compulsory acquisition of rights and imposition of restrictive covenants
25. Private rights over land
26. Application of the 1981 Act
27. Acquisition of subsoil or airspace only
28. Power to override easements and other rights
29. Modification of Part 1 of the Compulsory Purchase Act 1965
30. Rights under or over streets
31. Temporary use of land for constructing the authorised development
32. Temporary use of land for maintaining the authorised development
33. Statutory undertakers
34. Apparatus and rights of statutory undertakers in stopped up streets
35. Recovery of costs of new connections
36. Compulsory acquisition of land - incorporation of the mineral code

PART 6
MISCELLANEOUS AND GENERAL

37. Application of landlord and tenant law
38. Operational land for purposes of the 1990 Act
39. Felling or lopping of trees and removal of hedgerows
40. Trees subject to tree preservation orders
41. Certification of plans and documents, etc.
42. Arbitration
43. Protective Provisions
44. Service of notices
45. Procedure in relation to certain approvals etc.
46. Guarantees in respect of payment of compensation
47. No double recovery
48. Disregard of certain improvements, etc.
49. Set-off for enhancement in value of retained land

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT

SCHEDULE 2 — REQUIREMENTS
PART 1 — REQUIREMENTS
PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 4 — ALTERATION OF STREETS
PART 1 — PERMANENT ALTERATION OF LAYOUT
PART 2 — TEMPORARY ALTERATION OF LAYOUT
SCHEDULE 5 — STREETS AND PUBLIC RIGHTS OF WAY
PART 1 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS
PART 2 — TEMPORARY PROHIBITION OR RESTRICTION OF PUBLIC RIGHTS OF WAY WITH DIVERSION
PART 3 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY CLOSED AND DIVERTED
SCHEDULE 6 — ACCESS TO WORKS
SCHEDULE 7 — TRAFFIC REGULATION MEASURES
PART 1 — TEMPORARY SPEED LIMITS
PART 2 — TEMPORARY TRAFFIC SIGNS AND SIGNALS
SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
SCHEDULE 10 — REMOVAL OF HEDGEROWS
PART 1 — REMOVAL OF HEDGEROWS
PART 2 — REMOVAL OF POTENTIALLY IMPORTANT HEDGEROWS
SCHEDULE 11 — DOCUMENTS AND PLANS TO BE CERTIFIED
SCHEDULE 12 — ARBITRATION RULES
SCHEDULE 13 — PROTECTIVE PROVISIONS
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3 — FOR THE PROTECTION OF RAILWAY INTERESTS
PART 4 — FOR THE PROTECTION OF NATIONAL HIGHWAYS
PART 5 — FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES
PART 6 — FOR THE PROTECTION OF CADENT GAS LTD AS GAS UNDERTAKER
PART 7 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
PART 8 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
PART 9 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

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 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules 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, 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(**g**), 115(**h**), 120(**i**), 122(**j**) and 123(**k**) of the 2008 Act, makes the following Order.]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Great North Road Solar and Biodiversity Park Order 202[X] and comes into force on [DATE].

Interpretation

2.—(1) In this Order—

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

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

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

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

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

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, paragraph 5 of Schedule 13 to, the Localism Act 2011 (c. 20.)
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**l**) 1961 c. 33.
(**m**) 1965 c. 56.
(**n**) 1980 c. 66.
(**o**) 1981 c. 66.
(**p**) 1984 c. 27

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

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

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

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

"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 (but excluding the electrical cables as defined in this article), telecommunications equipment and electricity cabinets;

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

"BESS consent" means planning permission reference 22/01840/FULM granted on appeal by the Planning Inspectorate on 3 May 2024 (appeal reference: APP/B3030/W/23/3334043) authorising the construction of a battery energy storage system and associated infrastructure on part of the Order land;

"book of reference" means the document of that name identified in the table at Schedule 11 (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 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;

"concept design parameters and principles" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the concept design parameters and principles for the purposes of this Order;

"consented BESS" means the development authorised by the BESS consent;

"county authority" means the county council for the area in which the land to which the relevant provisions of this Order apply is situated;

"date of final commissioning" means in respect of each phase of the authorised development approved under requirement 3 of Schedule 2 (requirements) the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"definitive map and statement" has the same meaning as in Part III of the Wildlife and Countryside Act 1981(**e**);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

(**a**) 1989 c. 29.
(**b**) 1990 c. 8.
(**c**) 1991 c. 22. Section 48 (3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**d**) 2008 c. 29.
(**e**) 1981 c. 69.

"environmental statement" means the document of that name identified in Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"existing substation" means the existing National Grid substation at Staythorpe Road, Staythorpe, Newark-on-Trent NG23 5RG, owned and operated by NGET;

"flood risk assessment" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

"hedgerow plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the hedgerow plans for the purposes of this Order;

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

"holding company" has the same meaning as in section 1159 (meaning of "subsidiary" etc) of the Companies Act 2006(**b**);

"land plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

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

"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 plans which is within the limits of land to be acquired or used and described in the book of reference;

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

"outline archaeological mitigation strategy" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline archaeological mitigation strategy for the purposes of this Order;

"outline construction environmental management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) 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 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline decommissioning and restoration plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning and restoration plan for the purposes of this Order;

"outline fire safety management plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline fire safety management plan for the purposes of this Order;

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**b**) 2006 c. 46.

certified by the Secretary of State as the outline landscape and ecological 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 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

"outline recreational routes management plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline recreational routes management plan for the purposes of this Order;

"outline skills, supply chain and employment plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) 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 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan 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**);

"permit scheme" means the Nottinghamshire County Council Permit Scheme Order 2020 which is made under Part 3 of the Traffic Management Act 2004(**b**);

"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 (including vegetation removal associated with such surveys and investigations);

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

(c) road widening works and works for the provision of visibility splays (including vegetation removal associated with such works);

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

(e) diversion and laying of apparatus;

(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 associated with such site clearance); or

(i) advanced planting;

"planning authority" means the district planning authority for the area in which the land to which the relevant provisions of this Order apply is situated;

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

"public rights of way and permissive routes plan" means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the public rights of way and permissive routes plan for the purposes of this Order;

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

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

(**a**) 1981 c. 67.
(**b**) 2004 c. 18.

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

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

"street works" means the works listed in article 10(1) (street works);

"streets and access plans" means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the streets and access plans for the purposes of this Order;

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

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

"traffic regulation measures plan" means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

"undertaker" means Elements Green Trent Ltd (company number 13665771);

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

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

"working day" means any day 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 11 (documents and plans to be certified) 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 and watercourses include references to rights to do or restrain or to place and maintain anything in, on or under land or the watercourse or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land or watercourses 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 which is an interest otherwise comprised in the Order land.

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

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference 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.

(6) In this Order, the expression "includes" is to be construed without limitation.

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

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

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

(**a**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(**b**) 2006 c. 46.

(**c**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; S.I. 1999/1920 and S.I. 2001/1400.

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.

Operation of generating station

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

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

Power to maintain the authorised development

5.—(1) The undertaker may at any time maintain the authorised development.

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

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

Benefit of the Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 6 in respect of which the provisions of this Order are for the benefit of the undertaker and NGET.

Consent to transfer the benefit of the Order

7.—(1) Subject to the powers of this Order, the undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

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

(a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;

(b) the transferee or lessee is a holding company or subsidiary of the undertaker; 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 in writing before transferring or granting a benefit referred to in paragraph (1).

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

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

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

(c) the powers to be transferred or granted;

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

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

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 days from the date of the receipt of the notification by the Secretary of State.

(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 and modification of statutory provisions

8.—(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 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(**a**);

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

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

(d) the provisions of the Neighbourhood Planning Act 2017(**d**) insofar as they relate to temporary possession of land under articles 31 (temporary use of land for constructing the

(**a**) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
(**b**) Section 32 was amended by S.I. 2013/755.
(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 1 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**d**) 2017 c. 20.

authorised development) and 32 (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(**a**), any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) Regulation 6 of the Hedgerows Regulations 1997(h) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"or

(k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008."

(4) Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(i) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph 14(1)(a)(ix) the following—

"or

(x) so far as such work is necessary to implement development which has been authorised by an order granting development consent pursuant to the Planning Act 2008."

(5) 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(i) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Defence to proceedings in respect of statutory nuisance

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

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

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

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

(**a**) 1967 c. 10.
(**b**) 1990 c. 43.
(**c**) 1974 c. 40.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus 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; 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

11.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 10 (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 a 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 sub-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 Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements).

Power to alter layout, etc., of streets

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

(a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) in the case of the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

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

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

(b) make and maintain passing places.

(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 altered streets

13.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained during the period required by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 12(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary prohibition, restriction and diversion of use of streets and public rights of way

14.—(1) The undertaker may for the purposes of the authorised development, temporarily close, prohibit 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 for the purpose of crossing only 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 5 (streets and public rights of way) to the extent specified in column 3 of that table; and

(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 5 (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, restrict the use of, authorise the use of, alter or divert—

(a) any street or public right of way specified in paragraph (3) without first consulting the street authority during a period of not less than 28 days; and

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

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily prohibited, restricted, closed, altered or diverted under the powers conferred by this article and within the Order limits as a temporary working site.

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

Permanent closure of public rights of way

15.—(1) The undertaker may close the public rights of way specified in column 2 of the table in Part 3 (public rights of way to be permanently closed and diverted) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table.

(2) No public right of way specified in Part 3 (public rights of way to be permanently diverted) of Schedule 5 (streets and public rights of way) is to be wholly or partly closed under this article unless—

(a) the new public rights of way to be constructed and substituted for a closed public right of way specified in column 3 of the table in Part 3 (public rights of way to be permanently diverted) of Schedule 5 (streets and public rights of way) have been completed to the reasonable satisfaction of the street authority and are open for use; or

(b) a temporary alternative route for the passage of traffic as could have used the public right of way to be closed is first provided, opened for use and subsequently maintained by the

undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the closure of the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

(3) Where a public right of way has been permanently closed and the new permanent route completed under sub-paragraph (2)—

(a) all rights of way over or along the public right of way so closed are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

(4) Following the opening for public use of a public right of way that has been permanently diverted under the powers conferred by this article the undertaker must supply the surveying authority with plans showing that public right of way as permanently diverted together with a statement of the modifications required to the definitive map and statement.

(5) The plans and statement of modifications to the definitive map and statement referred to in paragraph (4) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981(**a**).

(6) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

(7) In this article "surveying authority" has the meaning given to it by section 66(1) (interpretation of Part III) of the Wildlife and Countryside Act 1981.

Access to works

16.—(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 approximate locations specified in Part 1 (permanent means of access to works) of Schedule 6 (access to works); and

(b) with the approval of 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) Any temporary measures undertaken in accordance with paragraph (1)(b) shall be removed by the undertaker as soon as is reasonably practicable when no longer required for the purposes of the authorised development and the land shall thereafter be restored to the highway authority's reasonable satisfaction.

Agreements with street authorities

17.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(b) any closure, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 10 (street works) article 12 (power to alter layout, etc., of streets), article 13(1) (construction and maintenance of altered streets) and article 16 (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

---

(**a**) 1981 c. 69.

(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

18.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the authorised development—

(a) make provision, in respect of those lengths of road specified in column 2 of Part 1 (temporary speed limits) of Schedule 7 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule; and

(b) temporarily place traffic signs and signals in the extents of the roads specified in column 2 of Part 2 (temporary traffic signs and signals) of Schedule 7 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

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

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

(c) as to prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

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

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

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

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

(a) consult 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 conferred by paragraphs (1) or (2) unless the undertaker has—

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

(b) not less than 7 days before the provision is to take effect, erected a notice at each end of the affected road explaining the effect of the provision; and

(**a**) S.I. 2016/362.
(**b**) S.I. 2011/935.

(c) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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 6 of Schedule 13 (protective provisions)), the provisions of Part 6 of Schedule 13 (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(**c**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local

(**a**) 2004 c. 18.
(**b**) 1991 c. 56.
(**c**) S.I. 2016/1154.

authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

Protective works to buildings

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(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 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) 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

21.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys (including aerial surveys carried out by drone) in respect of the authorised development or for the carrying out of ground, ecological or archaeological investigations and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and groundwater samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land including making trial trenches in such positions on the land as the undertaker thinks fit to carry out archaeological and site investigations; and

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

(4) No trial holes or boreholes 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) Following completion of any activities being undertaken pursuant to this article the undertaker must remove all equipment, apparatus and welfare facilities placed on the land in connection with such activities as soon as practicable, and the land must be restored to its original condition.

(6) 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.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the

compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to—

(a) article 23 (time limit for exercise of authority to acquire land compulsorily or to take land temporarily);

(b) paragraph (2) of article 24 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 27 (acquisition of subsoil or airspace only);

(d) article 31 (temporary use of land for constructing the authorised development);

(e) article 33 (statutory undertakers); and

(f) article 50 (inconsistent planning permissions).

(3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to the land specified in columns (1) and (2) of the table below—

(1) Area	*(2) Number of land shown on land plan*
Newark and Sherwood District	1/5, 1/10, 1/12, 1/18, 1/19, 1/20, 2/8, 2/14, 2/23, 2/25, 2/37, 3/6, 3/9, 3/10, 3/11, 4/2, 4/5, 5/2, 5/4, 5/5, 6/1, 7/4, 7/31, 8/6, 8/10, 8/11, 8/15, 8/16, 8/17, 8/18, 8/19, 8/28, 8/29, 9/1, 9/2, 9/3, 9/4, 9/5, 9/6, 9/7, 9/8, 10/14, 11/30, 14/1, 14/4, 14/28, 14/30, 14/31, 14/46, 14/47, 14/48, 17/20, 17/34, 17/36, 17/38, 18/3, 19/36, 19/37, 19/47, 19/49, 21/20, 21/21, 21/22, 21/26, 21/27, 21/28, 21/29, 21/31, 22/19, 22/20, 24/5, 24/9, 24/22, 24/23, 25/16, 25/23, 25/24, 26/3, 26/4, 26/5, 26/6, 26/7, 26/8, 28/1, 28/2, 28/3, 28/4, 28/5, 28/6, 30/9, 30/10, 30/11, 31/15, 31/18, 31/21, 32/9, 32/10, 32/12, 32/16, 32/35, 34/1

Time limit for exercise of authority to acquire land compulsorily or to take land temporarily

23.—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 of the 1965 Act (Compulsory Purchase under Acquisition of Land Act 1946); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 31 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) The applicable period for the purposes of section 4 (time limit for giving of notice to treat) of the 1965 Act and section 5A (time limit for general vesting declaration) of the 1981 Act (as

modified by this Order) is the period of five years beginning with the day on which the Order is made.

Compulsory acquisition of rights and imposition of restrictive covenants

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 22 (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 25 (private rights over land) and article 33 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to 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 the 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) Subject to the modifications set out in articles 47 (no double recovery), 48 (disregard of certain improvements, etc), 49(2) and (3) (set-off for enhancement in value of retained land), and Schedule 9 (modifications of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under the Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Private rights over land

25.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under article 22 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 22 (compulsory acquisition of land)—

(a) from the date of acquisition of the land by the undertaker, whether compulsorily, by agreement or through the grant of a lease of the land; or

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

whichever is the earlier.

(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 24 (compulsory acquisition of rights and imposition of restrictive covenants) cease to have

effect in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired or the restrictive covenant is imposed compulsorily, by agreement or through the grant of a lease of the land); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right or enforcement of the restrictive covenant,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (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 sub-paragraph (6)(b)—

(a) is made with a person in or to whom the right or restrictive covenant 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 includes reference to any right of way, right of navigation, 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

26.—(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 (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 2008 Act".

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

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

(8) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

> "(1) This section applies where after the execution of a general vesting declaration a person ("the claimant") claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest."

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

> "(2) But see article 27(3) (acquisition of subsoil or airspace only) of the Great North Road Solar and Biodiversity Park Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule."

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, or impose such restrictive covenants over the subsoil of or the airspace over the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, or imposes restrictive covenants over, the subsoil of or the airspace over the 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 sub-paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 29 (modification of Part 1 of 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) (reference of objection to Upper Tribunal: general) 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, or airspace above a house, building or manufactory.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) and the doing of anything else authorised by

this Order is authorised if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

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

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

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

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

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right, including any right of navigation, or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Subject to article 47 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), compensation—

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

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

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

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

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

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

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

(7) Subsection (2) of section 10 of the 1965 Act applies to paragraph (4) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(8) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (4) with any necessary modifications.

Modification of Part 1 of the Compulsory Purchase Act 1965

29.—(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 2008 Act".

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

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

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

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

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

"(2) But see article 27(3) (acquisition of subsoil or airspace only) of the Great North Road Solar and Biodiversity Park Order 202[X], 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 20 (protective works to buildings), article 31 (temporary use of land for constructing the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Great North Road Solar and Biodiversity Park Order 202[X]."

Rights under or over streets

30.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

31.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of any Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

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

(c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;

(d) use the land for the purposes of a working site (including storage of materials and siting of equipment, apparatus and welfare facilities) with access to the working site in connection with the authorised development;

(e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(2) The power conferred under paragraph (1)(a) does not apply to the Order Land specified in article 22(3) above.

(3) 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.

(4) 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.

(5) The undertaker is not required to serve notice under paragraph (2) in the case of emergency where the undertaker has identified a potential risk to the safety of any of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(6) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(7) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, drain, apparatus, fence, debris, vegetation or electric line removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);

(d) remove statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised project;

(e) restore the land on which any permanent works have been carried out under paragraph (1)(e); or

(f) restore the land on which any permanent 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).

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

(9) Any dispute as to a person's entitlement to compensation under paragraph (8), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) Subject to article 47 (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).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

(3) Unless paragraph (4) applies, 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 is not required to serve notice under paragraph (3) in the case of emergency where the undertaker has identified a potential risk to the safety of any of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such notice (if any) as is reasonably practical in the circumstances.

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

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

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Subject to article 47 (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 (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

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

Statutory undertakers

33. Subject to the provisions of Schedule 13 (protective provisions) the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers 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 stopped up streets

34. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (street works), article 12 (power to alter layout, etc., of streets), article 13 (construction and maintenance of altered streets) or article 14 (temporary closure 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 13 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (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 33 (statutory undertakers), any person who is—

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

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

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

Compulsory acquisition of land - incorporation of the mineral code

36. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for "undertaking" substitute "authorised development"; and

(c) for "compulsory purchase order" substitute "this Order".

PART 6

MISCELLANEOUS AND GENERAL

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 article 40 (trees subject to tree preservation orders) the undertaker may fell or lop any tree or shrub or cut back its roots, if it considers it reasonably necessary to prevent the tree or shrub from—

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

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

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

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

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

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

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

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

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

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), undertake works to or remove any hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) Without prejudice to the generality of paragraph (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 1 of the table in Schedule 10 (hedgerows to be removed) and shown on the hedgerows plan.

(6) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(7) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree that is subject to a tree preservation order within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development.

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

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

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

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

(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 11 (documents

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

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 12 (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 13 (protective provisions) has effect.

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 (6) to (8), by electronic transmission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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) Part 2 (procedure for discharge of requirements) of Schedule 2 (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 Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) and where stated to the contrary if, within ten 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) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 (protective provisions) or any dispute under article 20(6) (protective work to buildings) to which subparagraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 13 (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 land unless it has first put in place either—

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

(2) The provisions are—

(a) article 22 (compulsory acquisition of land);

(b) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 25 (private rights over land);

(d) article 27 (acquisition of subsoil or airspace only);

(e) article 28 (power to override easements and other rights);

(f) article 30 (rights under or over streets);

(g) article 31 (temporary use of land for constructing the authorised development);

(h) article 32 (temporary use of land for maintaining the authorised development); and

(i) article 33 (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.

No double recovery

47. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law or under two or more different provisions of this Order.

Disregard of certain improvements, etc.

48.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised project was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

Set-off for enhancement in value of retained land

49.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

Signatory text

Name
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

Address
Date

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

Interpretation

1. In this Schedule—

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

"inverter" means electrical equipment required to convert direct current power generated to alternating current;

"mounting structure" means a frame or rack made of galvanised steel or other material designed to support the solar modules and mounted on piles driven into the ground by one of the following methods: piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, pillars fixed to a concrete foundation, or a pillar set in concrete in a pre-made hole in the ground (micro piled);

"permissive routes" means new access tracks providing restricted public access within the Order limits shown with a broken pink line on the public rights of way and permissive routes plan;

"solar module" means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

"substation" means a compound, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation mounted on a reinforced foundation slab or piling;

"switchgear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

"transformer" means a structure containing an electrical device to transform electricity by increasing or reducing the voltage.

Authorised development

2. In the District of Newark and Sherwood in the County of Nottinghamshire 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.

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

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar modules fitted to mounting structures;

(b) electrical cabling and combiner boxes;

(c) conversion units including inverters, transformers, switchgear and monitoring and control systems; and

(d) electrical cables connecting Work No. 1 to Work No. 2, Work No. 4 and Work No. 5B,

together with any part of Work Nos. 2, 3 and 8,

and associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2— works to lay electrical cables and temporary construction laydown areas and compounds for the electrical cables including—

(a) underground electrical cables of up to 33 kilovolts connecting Work No. 1 to Work No. 4 and Work No. 5B;

(b) underground electrical cables of up to 132 kilovolts connecting Work No. 4 to Work No. 5B;

(c) underground electrical cables of up to 400 kilovolts connecting Work No. 5B to Work No. 6 or Work No. 7;

(d) tunnelling, trenching, boring and drilling works including horizontal directional drilling compounds;

(e) temporary bridges over watercourses;

(f) laying down of access tracks, ramps, footpaths and roads, including the laying and construction of drainage infrastructure, signage and information boards;

(g) temporary construction and decommissioning laydown areas comprising—

(i) areas of hardstanding, compacted ground or track matting;

(ii) car parking;

(iii) area to store materials and equipment;

(iv) site and welfare offices and workshops;

(v) security infrastructure, including cameras, perimeter fencing and lighting;

(vi) safety infrastructure to manage traffic when crossing roads or other obstacles;

(vii) site drainage and waste management infrastructure (including sewerage); and

(viii) electricity, water, waste water and telecommunications connections; and

(h) auxiliary cables, fibre optic cables, cable joint bays, cable ducts, kiosks, earthing conductors, transposition boxes, communication links, protective barriers and fencing, warning posts and markers on other buried equipment associated with the laying of underground electrical cables,

together with any part of Work Nos. 3 and 8.

Work No. 3— works to create, enhance and maintain green infrastructure, including—

(a) soft landscaping including planting and vegetation management;

(b) landscape and biodiversity enhancement measures including habitat creation and management; and

(c) permissive routes, public rights of way diversions, signage and information boards.

Work No. 4— intermediate substations including—

(a) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;

(b) underground electrical cables to provide connections with Work No. 1 and Work No. 2;

(c) electrical equipment including switchgear, transformers, reactors, transformer bays, feeder bays, cable sealing ends, busbars and ancillary equipment;

(d) control buildings including offices, storage containers and space and welfare facilities, monitoring and control systems, and maintenance compounds;

(e) surface water drainage systems, runoff outfalls, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks; and

(f) carparking, hardstanding areas and electric vehicle charging points for each intermediate substation,

together with any part of Work Nos. 1, 2, 3(a) and (b) and 8(a), (b) and (c).

Work No. 5A— an energy storage facility comprising—

(a) battery energy storage cells with automatic fire suppression system;

(b) a structure protecting the battery energy storage cells comprised in Work No. 5A(a) and ancillary equipment, being either one container or multiple containers, mounted on a reinforced concrete foundation slab or concrete piling;

(c) interconnection units including heating, ventilation and air conditioning or liquid cooling systems and temperature management either housed within the containers comprised in Work No. 5A(b), attached to the side or top of each of the containers, or located separate from but near to each of the containers;

(d) conversion units including inverters, transformers, switchgear and energy management system;

(e) monitoring and control systems housed within a container with Work No. 5A(b) or located separately in its own container or control room;

(f) underground electrical cables to provide connections with Work No. 5B;

(g) surface water drainage systems, runoff outfalls, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(h) first responder information and notification kiosks;

(i) electrical cables including connections; and

(j) fire safety infrastructure comprising fire suppression system for the purposes of firefighting comprising fire water tanks and fire water containment,

together with any part of Work Nos. 1, 2, 3 and 8.

Work No. 5B— a substation with works comprising—

(a) an up to 400 kilovolt substation, with associated transformer bays, feeder bays, cable sealing ends, transformers, switchgear buildings, concrete foundations and ancillary equipment including reactive power units;

(b) control building or container relay rooms with associated offices, storage and welfare facilities;

(c) underground electrical cables to provide connections Work No. 2 or Work No. 5A;

(d) electrical equipment including switchgear, transformers, reactors, transformer bays, feeder bays, cable sealing ends, busbars and ancillary equipment;

(e) surface water drainage systems, runoff outfalls, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(f) carparking, hardstanding areas and electric vehicle charging points;

(g) installation of electrical equipment within substation compound including cables, indoor and outdoor switchgear and associated busbars, auxiliary control and switch rooms, transformers, gantries; and

(h) first responder information and notification kiosks,

together with any part of Work Nos. 1, 2, 3, 5A and 8.

Work No. 6— works to the existing substation to facilitate connection of the authorised development into the national grid, including—

(a) electrical equipment including switchgear, cable sealing ends, busbars, protection and control equipment, compounds and associated buildings;

(b) earthing works; and

(c) works to lay underground electrical cables,

together with any part of Work Nos. 2, 3 and 8.

Work No. 7— works to the consented BESS to facilitate connection of the authorised development into the national grid, including—

(a) electrical equipment including switchgear, cable sealing ends, busbars, protection and control equipment, compounds and associated buildings;

(b) earthing works;

(c) upgrades to accesses and drainage works; and

(d) works to lay underground electrical cables,

together with any part of Work Nos. 2, 3 and 8.

Work No. 8— works to facilitate access to Work Nos. 1 to 7, including—

(a) creation of accesses from the public highway;

(b) creation and maintenance of visibility splays;

(c) works to street furniture;

(d) works to widen and surface existing highways; and

(e) making and maintaining passing places,

together with any part of Work No. 3.

In connection with and in addition to Work Nos. 1 to 8 further associated development within the Order limits, including—

(a) fencing, gates, stiles, boundary treatments and other means of enclosure;

(b) bunds, embankments, trenching and swales;

(c) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;

(d) irrigation infrastructure, surface water drainage systems, runoff outfalls, 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, lighting columns and lighting, cameras, lightning protection masts, weather stations, storage containers, communication infrastructure, and perimeter fencing;

(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, cycle routes and roads, signage and information boards;

(j) temporary footpath diversions;

(k) landscaping;

(l) temporary storage of materials prior to installation;

(m) temporary facilities including—

(i) construction laydown areas;

(ii) horizontal directional drilling compounds;

(iii) areas of hardstanding;

(iv) car parking;

(v) site and welfare offices and workshops;

(vi) security infrastructure, including cameras, perimeter fencing and lighting;

(vii) site drainage and waste management infrastructure (including sewerage); and

(viii) electricity, water, waste water and telecommunications connections;

(n) site establishments and preparation works including site clearance (including vegetation planting, removal and management and the demolition of existing buildings and structures), site investigation works, earthworks (including soil stripping and storage and site levelling) and excavations, the alteration of the position of services and utilities, piling and works for the protection of buildings and land; and

(o) tunnelling, boring and drilling works,

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 which are within the Order limits and fall within the scope of work assessed in the environmental statement.

SCHEDULE 2

Articles 3 and 45

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"county authority" means Nottinghamshire County Council being the county authority for the authorised development; and

"planning authority" means Newark and Sherwood District Council being the planning authority for the authorised development.

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) No part of the authorised development may commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) Notice of the date of final commissioning with respect to each phase of Work No. 1 must be given to the planning authority within 15 working days of the date of final commissioning for that phase.

Requirement for written approval

4. Where any approval, agreement or confirmation is required under any requirement, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(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 county authority or the planning authority (as applicable) for approval any amendments to any of the approved documents, plans, details or schemes and, following approval by the county authority or the planning authority (as applicable), and 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 county authority or the planning authority (as applicable) 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

6.—(1) No phase of the authorised development may commence until details of—

(a) layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

(f) vehicular and pedestrian access, parking and circulation areas; and

(g) refuse or other storage units, signs and lighting,

relating to that phase have been submitted to and approved by the planning authority.

(2) The details submitted must accord with the concept design parameters and principles.

(3) The authorised development must be carried out in accordance with the approved details.

Fire safety management

7.—(1) No part of Work No. 5A comprising any part of a battery energy storage system may commence until a fire safety management plan ("FSMP") has been submitted to and approved by the county authority.

(2) The FSMP submitted under sub-paragraph (1) must be substantially in accordance with the outline fire safety management plan.

(3) The FSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 5A including the transportation of new, used and replacement battery cells both to and from the authorised development.

(4) The county authority must consult with the Nottinghamshire Fire and Rescue Service and the Environment Agency before determining an application for approval of the FSMP.

(5) The FSMP must be implemented as approved.

Landscape and ecological management plan and biodiversity design strategy

8.—(1) The authorised development must not commence until a biodiversity design strategy has been submitted to and approved by the planning authority, such approval to be in consultation with the Environment Agency, the county authority and the statutory nature conservation body.

(2) The biodiversity design strategy must include details of how the strategy will secure a biodiversity net gain for all of the authorised development during the operation of the authorised development of at least 40% in area-based habitat units, at least 17% in hedgerow units, and at least 10% in watercourse units, using the Department of Environment, Food and Rural Affairs' statutory biodiversity metric (version 1.0.3) to calculate those percentages.

(3) The biodiversity design strategy must be substantially in accordance with the outline landscape and ecological 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.

(4) No phase of the authorised development may commence until a written landscape and ecological management plan for that phase has been submitted to and approved by the planning authority.

(5) The written landscape and ecological management plan for each phase of the authorised development submitted under paragraph (4) must—

(a) be substantially in accordance with the outline landscape and ecological management plan, the biodiversity design strategy approved pursuant to paragraph (1) and the concept design parameters and principles;

(b) provide details of the proposed hard and soft landscape and biodiversity enhancement works including (in so far as is relevant)—

(i) surveys, assessments and method statements;

(ii) location, number, species, size, plant protection measures and planting density of any proposed planting and the location of areas to be seeded;

(iii) cultivation, importing of materials and other operations to ensure plant establishment; and

(iv) implementation timetables for all landscape and biodiversity enhancement works; and

(c) provide details of how the landscape and biodiversity enhancement measures will be managed and maintained during the operation of the authorised development.

(6) All landscape and biodiversity enhancement works associated with the authorised development in each phase must be carried out in accordance with the approved landscape and ecological management plan for that phase.

(7) All permitted preliminary works must be carried out in accordance with the outline landscape and ecological management plan.

Fencing and other means of enclosure

9.—(1) No phase of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the outline construction environmental management plan, for that phase have been submitted to and approved by the planning authority, in consultation with the Environment Agency.

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase have been submitted to and approved by the planning authority, in consultation with the Environment Agency.

(3) Any construction site must remain securely fenced in accordance with the approved details under paragraph 9(1) at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase approved pursuant to sub-paragraph (2) must be completed and properly maintained for the operational lifetime of the part of the authorised development enclosed by the permanent fencing, walls or other means of enclosure.

Surface and foul water drainage

10.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy (including the results of the infiltration testing) and (if any) foul water drainage system (including means of pollution control) for that phase (which shall be substantially in accordance with the flood risk assessment) have been submitted to and approved by the county authority, such approval to be in consultation with the planning authority, internal drainage board, the Environment Agency and Severn Trent Water (in respect of its sewerage undertaker functions).

(2) Any strategy approved pursuant to sub-paragraph (1) must be implemented as approved.

Archaeology

11.—(1) No phase of the authorised development may commence until the details specified in sub-paragraph (2) for that phase have been submitted to and approved by the county authority, in consultation with the planning authority.

(2) The details for each phase to be submitted pursuant to sub-paragraph (1) must—

(a) include a written scheme for the investigation of areas of archaeological interest within that phase;

(b) identify any areas where a programme of archaeological investigation is required within that phase and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and

(c) be substantially in accordance with the outline archaeological mitigation strategy.

(3) Any archaeological works or programme of archaeological investigation carried out pursuant to the details approved under sub-paragraph (1) must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or programme of archaeological investigation for a phase of the authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1) for that phase.

(5) All permitted preliminary works must be carried out in accordance with the outline archaeological mitigation strategy.

Construction environmental management plan

12.—(1) No phase of the authorised development may commence until a construction environmental management plan for that phase has been submitted to and approved by the planning

authority, in consultation with the Environment Agency and, in relation to sustainable drainage systems measures, the county authority.

(2) The construction environmental management plan submitted under sub-paragraph (1) 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) All permitted preliminary works must be carried out in accordance with the outline construction environmental management plan.

Operational environmental management plan

13.—(1) Prior to the date of final commissioning for any phase, an operational environmental management plan for that phase must be submitted to and approved by the planning authority, in consultation with the county authority and the Environment Agency.

(2) The operational environmental management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline operational environmental management plan.

(3) The operation of the authorised development must be carried out in accordance with the approved operational environmental management plan.

Construction traffic management plan

14.—(1) No phase of the authorised development may commence until a construction traffic management plan for that phase has been submitted to and approved by the county authority, in consultation with National Highways.

(2) The construction traffic management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline construction traffic management plan and must be implemented as approved.

Operational noise

15.—(1) No part of work numbers 1, 4, 5A, 5B, 6 or 7 shall come into operation until an operational noise assessment has been submitted to and approved in writing by the planning authority.

(2) The assessment shall—

(a) be based on the final specification and layout of plant and equipment;

(b) demonstrate compliance with the rating levels set out in sub-paragraph (4); and

(c) identify any mitigation measures required to achieve compliance.

(3) The authorised development shall be operated in accordance with the approved assessment and any mitigation measures therein, which shall be implemented prior to first export of electricity and maintained for the lifetime of the authorised development.

(4) The rating level (LAr) of noise from the operation of the authorised development shall not exceed 35 dB LAr or 5 dB above the background noise level (whichever is greater), subject to an upper limit of 50 dB LAr for any one hour period between 0700 and 2300 and 40 dB LAr for any fifteen minute period between 2300 and 0700, when determined one metre freefield external to any window or door of any existing permanent residential premises using the definitions and methods described in BS4142:2014+A1:2019.

(5) In the event that noise complaints are received and substantiated by the planning authority (acting reasonably) following the authorised development becoming operational, the undertaker shall, upon reasonable request by the planning authority, submit a further operational noise impact assessment. The assessment shall—

(a) include attended measurements at or near the affected receptor(s);

(b) include comparison with predicted noise levels and BS4142 assessment;

(c) identify whether the operational noise is resulting in adverse impacts; and

(d) where necessary, include details of mitigation measures and a timetable for implementation.

(6) Any approved mitigation shall be implemented in accordance with the agreed timetable and shall remain in place for the lifetime of the authorised development.

Ground conditions

16.—(1) No phase of the authorised development may commence until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase detailed in any desk top study and/or preliminary risk assessment and which has been identified as more than a low level of risk has been submitted to and approved by the planning authority, in consultation with the Environment Agency.

(2) If, during the carrying out of the authorised development, contamination not previously identified is found to be present no further development (unless otherwise agreed with the planning authority) may be carried out on the areas 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 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) and any remediation strategy approved pursuant to sub-paragraph (2).

Skills, supply chain and employment

17.—(1) No phase of the authorised development may commence until a skills, supply chain and employment plan in relation to that phase has been submitted to and approved by the planning authority.

(2) The skills, supply chain and employment plan submitted under sub-paragraph (1) 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 the construction, operation and decommissioning of the authorised development, and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved.

Recreational enhancements and routes

18.—(1) No phase of the authorised development may commence until a recreational routes management plan in relation to that phase has been submitted to and approved by the county authority.

(2) The recreational routes management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline recreational routes management plan.

(3) The recreational routes management plan must be implemented as approved.

(4) Where a phase of the authorised development includes a permissive route, the permissive route must be provided and open to the public prior to the date of final commissioning in respect of that phase.

Decommissioning and restoration

19.—(1) Not less than 6 months before the 40th anniversary of the earlier of the date—

(a) on which the final phase of the authorised development; or

(b) 3 years following the date on which the first phase of the authorised development,

first exports electricity on a commercial basis (as notified to the planning authority pursuant to requirement 3(2)), a decommissioning and restoration plan must be submitted to the planning authority for its approval, in consultation with the county authority, National Highways and the Environment Agency.

(2) The decommissioning and restoration plan must be in substantial accordance with the outline decommissioning and restoration plan.

(3) The decommissioning and restoration plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Within 28 days of permanently ceasing operations in any phase the undertaker must notify the planning authority in writing of the date it permanently ceased operations for that phase.

(5) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Soil management

20.—(1) No phase of the authorised development may commence until a soil management plan in relation to that phase has been submitted to and approved by the planning authority, in consultation with Natural England.

(2) The soil management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline soil management plan.

(3) The soil management plan for each phase must be implemented as approved.

Community liaison

21.—(1) No phase of the authorised development may commence until a community liaison management plan has been submitted to and approved by the planning authority.

(2) The community liaison management plan to which sub-paragraph (1) refers shall include—

(a) contact details for the primary personnel employed by the undertaker for the purposes of community liaison from time to time;

(b) a communication strategy for engaging members of the public and interest groups; and

(c) details of the frequency and method of communicating updates.

(3) The community liaison management plan must be implemented as approved prior to commencement of the authorised development.

Glint and glare mitigation strategy

22.—(1) No phase of the authorised development may commence until a glint and glare mitigation strategy for that phase has been submitted to and approved by the planning authority, and National Highways in respect of matters which concern the strategic road network.

(2) The glint and glare mitigation strategy submitted in accordance with sub-paragraph (1) must be implemented as approved.

Long-term flood risk mitigation

23.—(1) If any part of Work No.1 is still in operation on 1 January 2069, the undertaker must notify the planning authority and the Environment Agency whether it anticipates that the operation of Work No. 1 will continue after 31 January 2069.

(2) If a notification under sub-paragraph (1) indicates that the undertaker anticipates that the operation of any part of Work No. 1 will continue after 31 January 2069, it must submit to the planning authority (following consultation with the Environment Agency)—

(a) an updated flood risk assessment of the flood risk arising from the continued operation of that part of Work No. 1 after 31 December 2069;

(b) the details of any mitigation or compensation measures that the flood risk assessment under paragraph (a) recommends are necessary;

(c) the implementation timetable, including identifying the need for (but not requiring a specific programme for the obtaining of) any consents, for any measures identified under paragraph (b); and

(d) retention proposals for any measures identified under paragraph (b) for the remaining lifetime of the authorised development,

unless otherwise agreed by the planning authority, in consultation with the Environment Agency.

(3) The undertaker must implement the measures approved under sub-paragraph (2)(b) in accordance with the implementation timetable approved under sub-paragraph (2)(c) no later than 31 December 2069 or such other time period as is agreed with the planning authority in consultation with the Environment Agency and must retain them for the lifetime of that part of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (2)(d).

(4) The undertaker must not continue operation of Work No. 1 beyond 31 December 2069 unless the planning authority has given its approval following consultation with the Environment Agency under sub-paragraph (2) and the undertaker has complied with subparagraph (3) unless otherwise agreed by the planning authority, in consultation with the Environment Agency.

Grid connection optionality

24.—(1) Prior to commencing any part of Work No. 6 or Work No. 7, the undertaker shall notify the planning authority of whether the authorised development will connect directly into the existing substation or via the substation associated with the consented BESS.

(2) The works required to connect into the national grid shall only proceed in accordance with notice to which sub-paragraph (1) refers.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"appeal documentation" means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker's case and evidence relied on;

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

"relevant authority" means any person, authority or body, other than the Secretary of State, named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the planning authority or the county authority (as applicable) in discharging that requirement.

Applications made under provisions of this Order

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (including consent,

(**a**) 1971 c. 80.

agreement or approval in respect of part of a requirement or a document referred to in any requirement or a document approved pursuant to any requirement) the relevant authority must give notice to the undertaker of their decision on the application within—

(a) in respect of all provisions (including the requirements in Part 1 of this Schedule) a period of 8 weeks beginning with the day immediately following that on which the application is received by the relevant authority;

(b) where further information is requested under paragraph 3 of this Part of this Schedule (further information and consultation), a period of 8 weeks beginning with the day immediately following that on which further information has been supplied by the undertaker; or

(c) such period that is longer than the periods in sub-paragraphs (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such period.

(2) In determining any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (including consent, agreement or approval in respect of part of a requirement), the relevant authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to reasonable conditions the relevant authority must provide its reasons for that decision within the notice of the decision.

(3) Subject to sub-paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

(a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report 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; or

(b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will 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 authority at the end of that period.

(5) The undertaker must include in any application made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order a statement that the provisions of sub-paragraph (3) apply and, if the application fails to do so, it is to be null and void.

Further information and consultation

3.—(1) In relation to any application made under paragraph 2 of this Part, the relevant 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 authority considers additional 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 authority must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the additional further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the

requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any additional further information requested by the requirement consultee within 14 business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request additional further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may appeal in the event that—

(a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4) of this Part) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;

(b) on receipt of a request for further information pursuant to paragraph 3 of this Part the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

(c) on receipt of any further information requested, the relevant 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 appeal process is to be as follows—

(a) any appeal by the undertaker must be made within 30 business days of the date of the notice of the decision or determination (or the date of any deemed decision or determination) 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 authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal (together with the undertaker, these are the "appeal parties");

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the "start date" for the purposes of this sub-paragraph (2);

(d) the relevant authority and any consultee required to be consulted pursuant to the provision of this Order which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 20 business 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 must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the appeal parties to the appointed person 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 any written representations on the submitted further information to the appointed person within 10 business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision or determination of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(7) 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.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is to be deemed to be an approval as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant 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 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 discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations unless a bespoke arrangement has been agreed between the Applicant and discharging authority and legally secured.

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule "cable works" means works to place, retain and maintain underground electrical and communications apparatus.

(1)	*(2)*	*(3)*

Area	*Street name and maintenance*	*Description of alteration*
Newark and Sherwood District	Staythorpe Road	Cable works beneath the width of the highway for the length shown in purple on sheet 1 of the streets and access plans, reference SW-1
Newark and Sherwood District	A617	Cable works beneath the width of the highway for the length shown in purple on sheet 2 of the streets and access plans, reference SW-2
Newark and Sherwood District	Cold Harbour Lane	Cable works beneath the width of the highway for the length shown in purple on sheets 3 and 5 of the streets and access plans, reference SW-13
Newark and Sherwood District	Caunton Road	Cable works beneath the width of the highway for the length shown in purple on sheet 8 of the streets and access plans, reference SW-3
Newark and Sherwood District	Winkburn Road	Cable works beneath the width of the highway for the length shown in purple on sheet 11 and 12 of the streets and access plans, reference SW-14
Newark and Sherwood District	Maplebeck Road	Cable works beneath the width of the highway for the length shown in purple on sheet 14 of the streets and access plans, reference SW-4
Newark and Sherwood District	A616	Cable works beneath the width of the highway for the length shown in purple on sheet 17 of the streets and access plans, reference SW-5
Newark and Sherwood District	Norwell Woodhouse Road	Cable works beneath the width of the highway for the length shown in purple on sheet 17 of the streets and access plans, reference SW-6
Newark and Sherwood District	Newark Road	Cable works beneath the width of the highway for the length shown in purple on sheet 19 of the streets and access plans, reference SW-12
Newark and Sherwood District	Kersall Road	Cable works beneath the width of the highway for the length shown in purple on sheet 17 and 21 of the streets and access plans, reference SW-8
Newark and Sherwood District	Norwell Road	Cable works beneath the width of the highway for the length shown in purple on sheet 20 and 21 of the streets and access plans, reference SW-7

Newark and Sherwood District	Kersall Road	Cable works beneath the width of the highway for the length shown in purple on sheet 21 and 22 of the streets and access plans, reference SW-15
Newark and Sherwood District	Kersall Road	Cable works beneath the width of the highway for the length shown in purple on sheet 21 and 22 of the streets and access plans, reference SW-16
Newark and Sherwood District	Ossington Road	Cable works beneath the width of the highway for the length shown in purple on sheet 23 of the streets and access plans, reference SW-9
Newark and Sherwood District	Moorhouse Road	Cable works beneath the width of the highway for the length shown in purple on sheet 24 of the streets and access plans, reference SW-10
Newark and Sherwood District	Moorhouse Road	Cable works beneath the width of the highway for the length shown in purple on sheet 24 of the streets and access plans, reference SW-17
Newark and Sherwood District	Ossington Lane	Cable works beneath the width of the highway for the length shown in purple on sheet 29 of the streets and access plans, reference SW-11
Newark and Sherwood District	Ossington Road	Cable works beneath the width of the highway for the length shown in purple on sheet 31 of the streets and access plans, reference SW-18
Newark and Sherwood District	Ossington Road	Cable works beneath the width of the highway for the length shown in purple on sheet 32 of the streets and access plans, reference SW-19

SCHEDULE 4

Articles 12 and 13

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street name and maintenance*	*(3)* *Description of alteration*
Newark and Sherwood District	A617	Works for the provision of a permanent means of access to the authorised development

		within the area shown hatched orange on sheet 2 of the streets and access plans, reference AS-A1
Newark and Sherwood District	Broadgate Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 7 of the streets and access plans, reference AS-A16
Newark and Sherwood District	Caunton Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 8 of the streets and access plans, reference AS-A3
Newark and Sherwood District	Maplebeck Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 10, 11 and 14 of the streets and access plans, reference AS-A4
Newark and Sherwood District	A616	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 17 of the streets and access plans, reference AS-A7
Newark and Sherwood District	Norwell Woodhouse Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 17 of the streets and access plans, reference AS-A17
Newark and Sherwood District	Newark Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 17 of the streets and access plans, reference AS-A5
Newark and Sherwood District	Newark Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 17 of the streets and access plans, reference AS-A6
Newark and Sherwood District	Kersall Road	Works for the provision of a permanent means of access to the authorised development

		within the area shown hatched orange on sheet 21 of the streets and access plans, reference AS-A8
Newark and Sherwood District	Kersall Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 21 and 22 of the streets and access plans, reference AS-A18
Newark and Sherwood District	Kersall Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 21 and 22 of the streets and access plans, reference AS-A9
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 24 of the streets and access plans, reference AS-A10
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 24 of the streets and access plans, reference AS-A19
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 25 of the streets and access plans, reference AS-A11
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent passing place shown hatched orange on sheet 25 of the streets and access plans, reference AS-P14
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P15
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P16
Newark and Sherwood District	Moorhouse Road	Works for the provision of a permanent passing place

		shown hatched orange on sheet 26 of the streets and access plans, reference AS-P17
Newark and Sherwood District	Weston Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P18
Newark and Sherwood District	Weston Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P19
Newark and Sherwood District	Weston Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P20
Newark and Sherwood District	Weston Road	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P21
Newark and Sherwood District	Ossington Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 28 and 29 of the streets and access plans, reference AS-A12
Newark and Sherwood District	Ossington Lane	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P22
Newark and Sherwood District	Ossington Lane	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P23
Newark and Sherwood District	Ossington Lane	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P24
Newark and Sherwood District	Ossington Lane	Works for the provision of a permanent passing place shown hatched orange on sheet 26 of the streets and access plans, reference AS-P25
Newark and Sherwood District	Ossington Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 31 of the streets and access plans,

		reference AS-A13
Newark and Sherwood District	Ossington Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 31 of the streets and access plans, reference AS-A14
Newark and Sherwood District	Carlton Lane	Works for the provision of a permanent passing place shown hatched orange on sheet 32 of the streets and access plans, reference AS-P27
Newark and Sherwood District	Carlton Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 32 of the streets and access plans, reference AS-A15
Newark and Sherwood District	Unnamed Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheet 33 and 34 of the streets and access plans, reference AS-A2

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street name*	*(3)* *Description of alteration*
Newark and Sherwood District	Caunton Road	Works for the provision of a temporary passing place along Caunton Road, area shown hatched blue on sheet 8 of the streets and access plans, reference AS-P1
Newark and Sherwood District	Caunton Road	Works for the provision of a temporary passing place along Caunton Road, area shown hatched blue on sheet 10 of the streets and access plans, reference AS-P2
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 14 of the streets and access plans, reference AS-P3
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown

		hatched blue on sheet 14 of the streets and access plans, reference AS-P4
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 14 of the streets and access plans, reference AS-P5
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 14 of the streets and access plans, reference AS-P6
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 14 of the streets and access plans, reference AS-P7
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 14 of the streets and access plans, reference AS-P8
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 18 of the streets and access plans, reference AS-P9
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 18 of the streets and access plans, reference AS-P10
Newark and Sherwood District	Maplebeck Road	Works for the provision of a temporary passing place along Maplebeck Road, area shown hatched blue on sheet 18 of the streets and access plans, reference AS-P11
Newark and Sherwood District	Newark Road	Works for the provision of a temporary passing place along Newark Road, area shown hatched blue on sheet 19 of the streets and access plans, reference AS-P12
Newark and Sherwood District	Newark Road	Works for the provision of a temporary passing place along Newark Road, area shown hatched blue on sheet 19 of the streets and access plans,

		reference AS-P13
Newark and Sherwood District	Ossington Road	Works for the provision of a temporary passing place along Newark Road, area shown hatched blue on sheet 31 of the streets and access plans, reference AS-P26

SCHEDULE 5

Articles 14 and 15

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

(1) *Area*	*(2)* *Road name, number and length*	*(3)* *Measure*
Newark and Sherwood District	Cold Harbour Lane From its junction with the A617 (reference RC1A) in a generally northern direction for a distance of 425 metres (to reference RC1B) as shown on sheet 5 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Newark Road From its junction with Broading Lane (reference RC2A) in a generally easterly direction for a distance of 1,240 metres (to reference RC2B) as shown on sheet 19 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Kersall Road From its junction with the A616 (reference RC3A) in a generally easterly direction for a distance of 530 metres (to reference RC3B) as shown on sheet 15 and 21 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Norwell Road From its junction with Kersall Road (reference RC4A) in a generally easterly direction for a distance of 525 metres (to reference RC4B) as shown on sheet 21 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Kersall Road From its junction with Norwell	Closed to all traffic save for traffic under the direction of the undertaker

	Road (reference RC5A) in a generally northerly direction for a distance of 830 metres (to reference RC5B) as shown on sheet 21 of the traffic regulation measures plan	
Newark and Sherwood District	Kersall Road From its junction with Ossington Road (reference RC6A) in a generally southerly direction for a distance of 325 metres (to reference RC6B) as shown on sheet 21 and 22 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Moorhouse Road From a point 210 metres north of its junction with Main Street (reference RC7A) in a generally northerly direction for a distance of 1,130 metres (to reference RC7B) as shown on sheet 24 and 30 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Ossington Lane From a point 480 metres north of its junction with Ossington Road (reference RC8A) in a generally southerly direction for a distance of 400 metres (to reference RC8B) as shown on sheet 29 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker
Newark and Sherwood District	Carlton Lane From its junction with Ossington Road (reference RC9A) in a generally northerly direction for a distance of 510 metres (to reference RC9B) as shown on sheet 32 of the traffic regulation measures plan	Closed to all traffic save for traffic under the direction of the undertaker

PART 2

TEMPORARY PROHIBITION OR RESTRICTION OF PUBLIC RIGHTS OF WAY WITH DIVERSION

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure and diversion*
Newark and Sherwood District	NT/Sutton On Trent/BW14 Approximately 1.07 kilometres of the 1.22 kilometre route to be closed between the points marked ST-BW14-a and ST-	Temporarily closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken brown line and diverted

	BW14-b as shown on sheet 29 of the public rights of way and permissive routes plan	along a route shown with a solid dark yellow line on sheet 29 of the public rights of way and permissive routes plan for the purposes of construction and decommissioning of the authorised development

PART 3

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY CLOSED AND DIVERTED

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure and diversion*
Newark and Sherwood District	NT/Averham/FP6 Approximately 1.33 kilometres of the 1.78 kilometre route to be closed between the points marked AV-FP6-a and AV-FP-6-b for approximately 767 metres and AV-FP6-c and AV-FP6-d for approximately 567 metres as shown on sheet 2 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked AV-FP6-a and AV-FP6-d, shown with a broken dark blue line on sheet 2 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Carlton-on-Trent/FP6 Approximately 347 metres of the 732 metre route to be closed between the points marked CT-FP6-a and CT-FP6-b as shown on sheet 32 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked CT-FP6-a and CT-FP6/10-c and then CT-FP10-a and CT-FP6/10-d, shown with a broken dark blue line on sheet 32 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Carlton-on-Trent/FP10 Approximately 333 metres of the 346 metre route to be closed between the points marked CT-FP10-a and CT-FP10-b,as shown on sheet 32 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked CT-FP6-a and CT-FP6/10-c and then CT-FP10-a and CT-FP6/10-d, shown with a broken dark blue line on sheet 32 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Laxton and Moorhouse/FP11 Approximately 186 metres of the 989 metre route to be	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a

	closed between the points marked LM-FP11-a and LM-FP11-b as shown on sheet 25 of the public rights of way and permissive routes plan	broken light blue line and diverted along a route between the points marked LM-FP11-a and LM-FP11-b, shown with a broken dark blue line on sheet 25 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Weston/FP10 Approximately 425 metres of the 761 metre route to be closed between the points marked W-FP10-a and W-FP10-b as shown on sheets 25 and 26 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked W-FP10-a and W-FP10-b, shown with a broken dark blue line on sheets 25 and 26 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Eakring/FP13 Approximately 166 metres of the 769 metre route to be closed between the points marked EK-FP13-a and EK-FP13-b as shown on sheet 19 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked EK-FP13-a and EK-FP13-b, shown with a broken dark blue line on sheet 19 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Eakring/FP14 Approximately 541 metres of the 571 metre route would be closed between the points marked EK-FP14-a and EK-FP14-b as shown on sheet 19 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked EK-FP14-a and EK-FP14-c, shown with a broken dark blue line on sheet 19 of the public rights of way and permissive routes plan
Newark and Sherwood District	NT/Kelham/FP7A The entire 189 metre route to be closed between the points marked K-FP7A-a and K-FP7A-b as shown on sheets 4 and 7 of the public rights of way and permissive routes plan	Permanently closed to all traffic save for traffic under the direction of the undertaker along a route shown with a broken light blue line and diverted along a route between the points marked K-FP7A-a and K-FP7A-c, shown with a broken dark blue line on sheets 4 and 7 of the public rights of way and permissive routes plan

SCHEDULE 6

Article 16

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Newark and Sherwood District	A617	The provision of a permanent means of access to the authorised development from the northern side of the A617 between the points marked PA1-1 and PA1-2 on sheet 2 of the streets and access plans
Newark and Sherwood District	Broadgate Lane	The provision of a permanent means of access to the authorised development from the southern side of Broadgate Lane between the points marked SA2-1 and SA2-2 on sheet 7 of the streets and access plans
Newark and Sherwood District	Broadgate Lane	The provision of a permanent means of access to the authorised development from the northern side of Broadgate Lane between the points marked SA3-1 and SA3-2 on sheet 7 of the streets and access plans
Newark and Sherwood District	Caunton Road	The provision of a permanent means of access to the authorised development from the western side of Caunton Road between the points marked PA3-1 and PA3-2 on sheet 8 of the streets and access plans
Newark and Sherwood District	Maplebeck Road	The provision of a permanent means of access to the authorised development from the southern side of Maplebeck Road between the points marked PA4-1 and PA4-2 on sheet 11 of the streets and access plans
Newark and Sherwood District	Norwell Woodhouse Road	The provision of a permanent means of access to the authorised development from the western side of Norwell Woodhouse Road between the points marked SA10-1 and SA10-2 on sheet 17 of the streets and access plans
Newark and Sherwood District	Norwell Woodhouse Road	The provision of a permanent means of access to the

		authorised development from the eastern side of Norwell Woodhouse Road between the points marked SA11-1 and SA1-2 on sheet 17 of the streets and access plans
Newark and Sherwood District	A616	The provision of a permanent means of access to the authorised development from the western side of the A616 between the points marked PA7-1 and PA7-2 on sheet 17 of the streets and access plans
Newark and Sherwood District	A616	The provision of a permanent means of access to the authorised development from the eastern side of the A616 between the points marked PA8-1 and PA8-2 on sheet 17 of the streets and access plans
Newark and Sherwood District	Newark Road	The provision of a permanent means of access to the authorised development from the southern side of Newark Road between the points marked PA5-1 and PA5-2 on sheet 19 of the streets and access plans
Newark and Sherwood District	Newark Road	The provision of a permanent means of access to the authorised development from the northern side of Newark Road between the points marked SA8-1 and SA8-2 on sheet 19 of the streets and access plans
Newark and Sherwood District	Newark Road	The provision of a permanent means of access to the authorised development from the southern side of Newark Road between the points marked PA6-1 and PA6-2 on sheet 19 of the streets and access plans
Newark and Sherwood District	Newark Road	The provision of a permanent means of access to the authorised development from the southern side of Newark Road between the points marked SA9-1 and SA9-2 on sheet 19 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the southern side of Kersall

		Road between the points marked PA9-1 and PA9-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the northern side of Kersall Road between the points marked SA12-1 and SA12-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the southern side of Kersall Road between the points marked SA13-1 and SA13-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the northern side of Kersall Road between the points marked SA14-1 and SA14-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the western side of Kersall Road between the points marked PA10-1 and PA10-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the eastern side of Kersall Road between the points marked SA15-1 and SA15-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Kersall Road	The provision of a permanent means of access to the authorised development from the western side of Kersall Road between the points marked SA16-1 and SA16-2 on sheet 21 of the streets and access plans
Newark and Sherwood District	Moorhouse Road	The provision of a permanent means of access to the authorised development from the western side of Moorhouse

		Road between the points marked PA11-1 and PA11-2 on sheet 24 of the streets and access plans
Newark and Sherwood District	Moorhouse Road	The provision of a permanent means of access to the authorised development from the western side of Moorhouse Road between the points marked SA20-1 and SA20-2 on sheet 24 of the streets and access plans
Newark and Sherwood District	Moorhouse Road	The provision of a permanent means of access to the authorised development from the eastern side of Moorhouse Road between the points marked SA21-1 and SA21-2 on sheet 24 of the streets and access plans
Newark and Sherwood District	Moorhouse Road	The provision of a permanent means of access to the authorised development from the eastern side of Moorhouse Road between the points marked PA12-1 and PA12-2 on sheet 25 of the streets and access plans
Newark and Sherwood District	Ossington Lane	The provision of a permanent means of access to the authorised development from the northern side of Ossington Lane between the points marked PA13-1 and PA13-2 on sheet 28 of the streets and access plans
Newark and Sherwood District	Ossington Road	The provision of a permanent means of access to the authorised development from the northern side of Ossington Road between the points marked PA14-1 and PA14-2 on sheets 31 of the streets and access plans
Newark and Sherwood District	Ossington Road	The provision of a permanent means of access to the authorised development from the southern side of Ossington Road between the points marked PA15-1 and PA15-2 on sheet 31 of the streets and access plans
Newark and Sherwood District	Ossington Road	The provision of a permanent means of access to the authorised development from the northern side of Road

		between the points marked PA16-1 and PA16-2 on sheet 31 the streets and access plans
Newark and Sherwood District	Carlton Lane	The provision of a permanent means of access to the authorised development from the western side of Carlton Lane between the points marked PA17-1 and PA17-2 on sheet 32 of the streets and access plans
Newark and Sherwood District	Carlton Lane	The provision of a permanent means of access to the authorised development from the eastern side of Carlton Lane between the points marked SA22-1 and SA22-2 on sheet 32 of the streets and access plans
Newark and Sherwood District	Unnamed Road	The provision of a permanent means of access to the authorised development from the southern side of Unnamed Road between the points marked SA23-1 and SA23-2 on sheet 33 of the streets and access plans
Newark and Sherwood District	Unnamed Road	The provision of a permanent means of access to the authorised development from the northern side of Unnamed Road between the points marked SA24-1 and SA24-2 on sheet 33 and 34 of the streets and access plans

SCHEDULE 7

Article 18

TRAFFIC REGULATION MEASURES

PART 1

TEMPORARY SPEED LIMITS

(1) *Area*	*(2)* *Road name, number and length*	*(3)* *Temporary speed limit*
Newark and Sherwood District	A617 From a point 610 metres in a generally northerly direction from its junction with Staythorpe Road (reference SL1B) for a distance of 425 metres in a generally northerly direction (to reference SL1A)	30 miles per hour

	as shown on sheet 2 of the traffic regulation measures plan	
Newark and Sherwood District	Broadgate Lane From a point 820 metres in a generally westerly direction from its junction with Cold Harbour Lane (reference SL2B) for a distance of 400 metres in a generally northerly direction (to reference SL2A) as shown on sheet 7 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Caunton Road From a point 2,290 metres in a generally northerly direction from its junction with the A617 (reference SL3A) for a distance of 650 metres in a generally northerly direction (to reference SL3B) as shown on sheet 8 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Maplebeck Road From a point 1,430 metres in a generally westerly direction from its junction with the A617 (reference SL4A) for a distance of 3,430 metres in a generally westerly direction (to reference SL4B) as shown on sheet 10, 14 and 18 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Maplebeck Road From a point 300 metres in a generally easterly direction from its junction with Broading Lane (reference SL5B) for a distance of 1,390 metres in a generally westerly direction (to reference SL5A) as shown on sheet 19 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Norwell Woodhouse Road From a point at its junction with the A616 (reference SL6A) in a generally northerly direction for a distance of 585 metres in a generally northerly direction (to reference SL6B) as shown on sheet 16 and 17 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	A616 From a point 35 metres in a	30 miles per hour

	generally northerly direction from its junction with Norwell Woodhouse Road (reference SL7A) for a distance of 475 metres in a generally northerly direction (to reference SL8B) as shown on sheet 17 of the traffic regulation measures plan	
Newark and Sherwood District	Kersall Road From a point at its junction with the A616 (reference SL8A) in a generally northerly direction for a distance of 725 metres in a generally northerly direction (to reference SL8B) as shown on sheet 17 and 21 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Kersall Road From a point 1,120 metres in a generally northerly direction from its junction with the A616 (reference SL9A) in a generally northerly direction for a distance of 740 metres in a generally northerly direction (to reference SL9B) as shown on sheet 21 and 22 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Moorhouse Road From a point 585 metres in a generally northerly direction from its junction with Ossington Road (reference SL10A) in a generally northerly direction for a distance of 960 metres in a generally northerly direction (to reference SL10B) as shown on sheet 24 and 30 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Moorhouse Road From its junction with the Weston Road (reference SL11B) in a generally southerly direction for a distance of 1,290 metres (to reference SL11A) as shown on sheet 25 and 26 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Ossington Lane From its junction with the B1164 (reference SL12B) in a	30 miles per hour

	generally westerly direction for a distance of 1,380 metres (to reference SL12A) as shown on sheet 28 and 29 of the traffic regulation measures plan	
Newark and Sherwood District	Ossington Road From a point 1,020 metres in a generally westerly direction from its junction with Carlton Lane (reference SL13B) in a generally westerly direction for a distance of 1,500 metres in a generally westerly direction (to reference SL13A) as shown on sheet 31 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Carlton Lane From its junction with Ossington Road (reference SL14B) in a generally southerly direction for a distance of 500 metres (to reference SL14B) as shown on sheet 32 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Unnamed Road From a point 370 metres in a generally westerly direction (reference SL15B) in a generally westerly direction for a distance of 370 metres (to reference SL15A) as shown on sheet 33 of the traffic regulation measures plan	30 miles per hour
Newark and Sherwood District	Weston Road From its junction with the B1164 (reference SL16B) in a generally southerly direction for a distance of 815 metres (to reference SL16A) as shown on sheet 26 of the traffic regulation measures plan	30 miles per hour

PART 2

TEMPORARY TRAFFIC SIGNS AND SIGNALS

(1) *Area*	*(2)* *Road name*	*(3)* *Extent of temporary traffic signs and signals*
Newark and Sherwood District Council	A617	An area of existing highway from a point 720 metres in a generally northerly direction from its junction with Staythorpe Road for a distance

		of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plan (reference TS1)
Newark and Sherwood District Council	Broadgate Lane	An area of existing highway from a point 940 metres in a generally westerly direction from its junction with Cold Harbour Lane for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plan (reference TS2)
Newark and Sherwood District Council	Caunton Road	An area of existing highway from a point 1,800 metres in a generally southerly direction from its junction with the A616 for a distance of 60 metres in a generally southerly direction and including means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plan (reference TS3)
Newark and Sherwood District Council	Caunton Road	An area of existing highway from a point 1,500 metres in a generally southerly direction from its junction with the A616 for a distance of 60 metres in a generally southerly direction, as shown on sheet 8 of the traffic regulation measures plan (reference TS4)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 1,600 metres in a generally westerly direction from its junction with the A616 for a distance of 60 metres in a generally westerly direction, as shown on sheet 10 of the traffic regulation measures plan (reference TS5)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 1,950 metres in a generally westerly direction from its junction with the A616 for a distance of 60 metres in a generally westerly direction and including means of access to the authorised development, as shown on sheets 10, 11, 14

		and 15 of the traffic regulation measures plan (reference TS6)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 2,150 metres in a generally westerly direction from its junction with the A616 for a distance of 60 metres in a generally westerly direction, as shown on sheet 14 of the traffic regulation measures plan (reference TS7)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 660 metres in a generally southerly direction from its junction with The Hollows for a distance of 60 metres in a generally southerly direction, as shown on sheet 14 of the traffic regulation measures plan (reference TS8)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 370 metres in a generally southerly direction from its junction with The Hollows for a distance of 60 metres in a generally southerly direction, as shown on sheet 14 of the traffic regulation measures plan (reference TS9)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 80 metres in a generally southerly direction from its junction with The Hollows for a distance of 60 metres in a generally southerly direction, as shown on sheet 14 of the traffic regulation measures plan (reference TS10)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 125 metres in a generally northerly direction from its junction with The Hollows for a distance of 60 metres in a generally northerly direction, as shown on sheet 14 of the traffic regulation measures plan (reference TS11)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 340 metres in a generally northerly direction from its junction with The Hollows for a distance of 60 metres in a generally northerly direction, as shown on sheet 18

		of the traffic regulation measures plan (reference TS12)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 610 metres in a generally westerly direction from its junction with The Hollows for a distance of 60 metres in a generally westerly direction, as shown on sheet 18 of the traffic regulation measures plan (reference TS13)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 1,000 metres in a generally westerly direction from its junction with The Hollows for a distance of 60 metres in a generally westerly direction, as shown on sheet 18 of the traffic regulation measures plan (reference TS14)
Newark and Sherwood District Council	Maplebeck Road	An area of existing highway from a point 2,230 metres in a generally westerly direction from its junction with The Hollows for a distance of 60 metres in a generally westerly direction, as shown on sheet 19 of the traffic regulation measures plan (reference TS15)
Newark and Sherwood District Council	Newark Road	An area of existing highway from a point 1,005 metres in a generally easterly direction from its junction with Broading Lane for a distance of 60 metres in a generally easterly direction, as shown on sheet 19 of the traffic regulation measures plan (reference TS16)
Newark and Sherwood District Council	Newark Road	An area of existing highway from a point 900 metres in a generally easterly direction from its junction with Broading Lane for a distance of 100 metres in a generally easterly direction and including means of access to the authorised development, as shown on sheet 19 of the traffic regulation measures plan (reference TS17)
Newark and Sherwood District	Newark Road	An area of existing highway

Council		from a point 550 metres in a generally easterly direction from its junction with Broading Lane for a distance of 100 metres in a generally easterly direction and including means of access to the authorised development, as shown on sheet 19 of the traffic regulation measures plan (reference TS18)
Newark and Sherwood District Council	Norwell Woodhouse Road	An area of existing highway from a point 285 metres in a generally northerly direction from its junction with the A616 for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 17 of the traffic regulation measures plan (reference TS19)
Newark and Sherwood District Council	A616	An area of existing highway from a point 230 metres in a generally northerly direction from its junction with Norwell Woodhouse Road for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 17 of the traffic regulation measures plan (reference TS20)
Newark and Sherwood District Council	Kersall Road	An area of existing highway from a point 205 metres in a generally northerly direction from its junction with the A616 for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheets 17 and 21 of the traffic regulation measures plan (reference TS21)
Newark and Sherwood District Council	Kersall Road	An area of existing highway from a point 1,190 metres in a generally northerly direction from its junction with the A616 for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 21 of the traffic regulation measures plan (reference TS22)

Newark and Sherwood District Council	Kersall Road	An area of existing highway from a point 230 metres in a generally southerly direction from its junction with Ossington Road for a distance of 170 metres in a generally southerly direction and including means of access to the authorised development, as shown on sheets 21 and 22 of the traffic regulation measures plan (reference TS23)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 915 metres in a generally northerly direction from its junction with Ossington Road for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 24 of the traffic regulation measures plan (reference TS24)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 1,230 metres in a generally northerly direction from its junction with Ossington Road for a distance of 100 metres in a generally northerly direction and including means of access to the authorised development, as shown on sheet 24 of the traffic regulation measures plan (reference TS25)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 995 metres in a generally southerly direction from its junction with Weston Road for a distance of 100 metres in a generally southerly direction and including means of access to the authorised development, as shown on sheet 25 of the traffic regulation measures plan (reference TS26)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 750 metres in a generally southerly direction from its junction with Weston Road for a distance of 60 metres in a generally southerly direction, as shown on sheet 25 of the traffic regulation measures plan (reference

		TS27)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 500 metres in a generally southerly direction from its junction with Weston Road for a distance of 60 metres in a generally southerly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS28)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 285 metres in a generally southerly direction from its junction with Weston Road for a distance of 60 metres in a generally southerly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS29)
Newark and Sherwood District Council	Moorhouse Road	An area of existing highway from a point 30 metres in a generally southerly direction from its junction with Weston Road for a distance of 60 metres in a generally southerly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS30)
Newark and Sherwood District Council	Weston Road	An area of existing highway from a point 40 metres in a generally easterly direction from its junction with Moorhouse Road for a distance of 60 metres in a generally easterly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS31)
Newark and Sherwood District Council	Weston Road	An area of existing highway from a point 370 metres in a generally easterly direction from its junction with Moorhouse Road for a distance of 60 metres in a generally easterly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS32)
Newark and Sherwood District Council	Weston Road	An area of existing highway from a point 485 metres in a generally easterly direction from its junction with Moorhouse Road for a distance

		of 60 metres in a generally easterly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS33)
Newark and Sherwood District Council	Weston Road	An area of existing highway from a point 20 metres in a generally southerly direction from its junction with the B1164 for a distance of 60 metres in a generally southerly direction, as shown on sheet 26 of the traffic regulation measures plan (reference TS34)
Newark and Sherwood District Council	Ossington Lane	An area of existing highway from a point 1,230 metres in a generally westerly direction from its junction with the B1164 for a distance of 100 metres in a generally westerly direction and including means of access to the authorised development, as shown on sheet 28 of the traffic regulation measures plan (reference TS35)
Newark and Sherwood District Council	Ossington Lane	An area of existing highway from a point 1,100 metres in a generally westerly direction from its junction with the B1164 for a distance of 60 metres in a generally westerly direction, as shown on sheet 28 of the traffic regulation measures plan (reference TS36)
Newark and Sherwood District Council	Ossington Lane	An area of existing highway from a point 620 metres in a generally westerly direction from its junction with the B1164 for a distance of 60 metres in a generally westerly direction, as shown on sheet 28 of the traffic regulation measures plan (reference TS37)
Newark and Sherwood District Council	Ossington Lane	An area of existing highway from a point 315 metres in a generally westerly direction from its junction with the B1164 for a distance of 60 metres in a generally westerly direction, as shown on sheet 28 of the traffic regulation measures plan (reference TS38)

Newark and Sherwood District Council	Ossington Lane	An area of existing highway from a point 90 metres in a generally westerly direction from its junction with the B1164 for a distance of 60 metres in a generally westerly direction, as shown on sheet 28 of the traffic regulation measures plan (reference TS39)
Newark and Sherwood District Council	Ossington Road	An area of existing highway from a point 240 metres in a generally easterly direction from its junction with Ossington Lane for a distance of 60 metres in a generally easterly direction, as shown on sheet 31 of the traffic regulation measures plan (reference TS40)
Newark and Sherwood District Council	Ossington Road	An area of existing highway from a point 825 metres in a generally easterly direction from its junction with Ossington Lane for a distance of 100 metres in a generally easterly direction and including means of access to the authorised development, as shown on sheet 31 of the traffic regulation measures plan (reference TS41)
Newark and Sherwood District Council	Carlton Lane	An area of existing highway from a point 65 metres in a generally southerly direction from its junction with Ossington Road for a distance of 60 metres in a generally southerly direction, as shown on sheet 32 of the traffic regulation measures plan (reference TS42)
Newark and Sherwood District Council	Carlton Lane	An area of existing highway from a point 250 metres in a generally southerly direction from its junction with Ossington Road for a distance of 100 metres in a generally southerly direction and including means of access to the authorised development, as shown on sheet 32 of the traffic regulation measures plan (reference TS43)
Newark and Sherwood District Council	Unnamed Road	An area of existing highway from a point 745 metres in a generally westerly direction

		from its junction with Carlton Lane for a distance of 35 metres in a generally easterly direction and including means of access to the authorised development, as shown on sheet 33 of the traffic regulation measures plan (reference TS44)
Newark and Sherwood District Council	Unnamed Road	An area of existing highway from a point 465 metres in a generally westerly direction from its junction with Carlton Lane for a distance of 100 metres in a generally westerly direction and including means of access to the authorised development, as shown on sheet 33 of the traffic regulation measures plan (reference TS45)

SCHEDULE 8

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"access rights" means all rights necessary for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, including to—

(a) pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface);

(b) make such investigations in, on or under the land and undertake such site preparation and clearance works as are necessary for the purpose of enabling the right to pass and re-pass;

(c) enter, be on, and break up the surface of, the land;

(d) create and effect access to and from the highway;

(e) upgrade, surface, resurface, use and repair the land for the purpose of enabling the right to pass and re-pass to adjoining land, including creating and maintaining visibility splays, and removing impediments to the exercise of such right to pass and repass;

(f) lay out, use, remove and divert paths for public use;

(g) fell, lop, cut, coppice, uproot and/or remove trees, hedges, shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;

(h) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;

(i) erect, repair and remove fencing, security and monitoring measures such as CCTV columns, lighting columns and lighting for the purpose of enabling the right to pass and re-pass;

(j) remove any works carried out to facilitate the right to pass and re-pass and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and

(k) exercise such other rights as may be necessary to facilitate the further associated development works or operations defined in Schedule 1 to the Order;

"cable rights" means all rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development, including to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain and repair electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, together with works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures (collectively referred to as "the cables");

(b) carry out open cut trenching or horizontal directional drilling or any other trenchless method of installing the cables the effects of which are within those assessed in the environmental statement, and create, use and remove launch and exit pits and associated cable ducts;

(c) remain, pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface);

(d) erect, use and remove fencing, gates, walls, barriers or other means of enclosure, and create, use and remove secure working areas and compounds;

(e) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove and reinstate means of access to the land (including visibility splays) and to remove impediments to such access;

(f) create and effect access to and from the highway;

(g) lay out, use, remove and divert paths for public use;

(h) make such investigations in, on or under the land as required, including archaeological investigations;

(i) excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;

(j) install, retain and maintain cable marker posts to identify the location of the cables in the land (subject to an obligation to minimise interference with future use and operations within the land);

(k) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(l) fell, lop, cut, coppice, uproot and/or remove trees, hedges, shrubs or other vegetation which now or hereafter may be standing on the land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;

(m) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;

(n) carry out such works (together with associated fencing) required by this Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts);

(o) remove any works carried out and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and

(p) exercise such other rights as may be necessary to facilitate the further associated development works or operations defined in Schedule 1 to the Order;

"cable restrictive covenant" means a restrictive covenant over the land for the benefit of the remainder of the Order land to—

(a) prevent anything being done in or on the land or any part thereof for the purposes of—

(i) the erection of any buildings; or

(ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development);

(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed hard surfacing would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development);

(c) prevent anything to be done by way of excavation of any kind or agricultural practices exceeding 0.5 metres in depth from—

(i) the surface of the land;

(ii) the true cleaned bottom of the open drain, ditch, watercourse or river; or

(iii) any activities which increase or decrease ground cover or soil levels or change the composition of the land in any manner whatsoever,

without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require;

(d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker;

(e) prevent anything being done which may interfere with the free flow and passage of electricity or telecommunications through the cables or support for the authorised development; and

(f) prevent anything being done in or on the land or any part thereof which will, or which the undertaker can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule, or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

(1) Plot reference number shown on the land plans	*(2) Purposes for which rights over land may be acquired and restrictive covenants imposed*
1/1, 1/2, 1/3, 1/4, 1/6, 1/7, 1/8, 1/9, 1/13, 1/14, 1/15, 1/16, 1/17, 1/21, 1/22, 2/1, 2/2, 2/3, 2/4, 2/5, 2/18, 2/19, 2/20, 2/21, 2/31, 2/40, 2/44, 2/49, 2/50, 3/5, 4/12, 5/1, 5/3, 5/6, 5/7, 7/8, 7/19, 8/12, 8/13, 8/14, 8/27, 10/6, 10/7, 11/15, 11/26, 13/8, 13/19, 14/2, 14/3, 16/7, 17/12, 17/13, 17/17, 17/18, 17/21, 17/22, 17,32, 17/33, 19/1, 19/2, 19/32, 19/33, 19/38, 19/39, 19/40, 19/41, 19/42, 19/43, 19/44, 19/46, 19/50, 21/24, 21/25, 21/30, 22/7, 22/10, 22/21, 22/22, 22/28, 23/8, 23/9, 23/10, 23/17, 23/18, 24/8, 24/11, 24/18, 29/5, 29/6, 31/1, 31/14,	Cable rights and cable restrictive covenant

31/16, 31/31, 31/47, 32/11, 32/19, 33/1	
1/11, 1/23, 2/9, 2/11, 2/12, 2/17, 2/24, 2/29, 4/11, 7/7, 7/11, 8/5, 8/9, 11/14, 11/27, 13/7, 14/32, 14/44, 16/8, 17/7, 17/19, 17/31, 17/40, 23/15, 24/12, 24/24, 25/18, 28/7, 29/10, 31/12, 32/13, 32/34, 33/8, 33/9	Access rights

SCHEDULE 9

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "If—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Great North Road Solar and Biodiversity Park Order 202[X]);

(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 Great North Road Solar and Biodiversity Park Order 202[X]) 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

(**a**) 1973 c. 26.

of land under article 22 (compulsory acquisition of land) and as modified by article 29 (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 22 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(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 (measure of compensation in case of severance) of the 1965 Act substitute—

> "**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

(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 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) Section 20 (tenants at will, etc.)(**a**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is 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 (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serve 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 26 (application of the 1981 Act) of the Great North Road Solar and Biodiversity Park Order 202[X] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the Great North Road Solar and Biodiversity Park Order 202[X] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house", except in paragraph 10, 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.

(**a**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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 caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 10

Article 39

REMOVAL OF HEDGEROWS

PART 1

REMOVAL OF HEDGEROWS

(1)	*(2)*
Hedgerow reference on the hedgerows plan	*Extent of removal*
H001, H002a, H002b, H003, H004, H005,	Removal of part of each of the hedgerows

H006, H007, H008, H009, H010, H011, H012, H013, H014, H015, H023, H024, H025, H026, H027, H028, H029, H030, H031, H033, H035, H036, H037, H038, H039, H040, H041, H042, H043, H044, H045, H046, H047, H048, H049, H050, H051, H052, H053, H054, H055, H056, H057, H058, H059, H060, H061, H062, H063, H064, H065, H066, H067, H068, H069, H070, H071, H072, H073, H074, H075, H076, H077, H080, H081, H083, H084, H087, H088, H089, H090, H091, H092, H093, H094, H095, H099, H101, H102, H103, H104, H105, H106, H107, H108, H111, H112, H113, H114, H120, H123, H128, H130, H132, H134, H136, H141, H142, H143, H144, H145, H146, H147, H150, H156, H157, H158, H159, H160, H161, H162, H163, H177, H178, H179, H180, H181, H182, H183, H184, H185, H186, H187, H188, H189, H190, H191, H192, H193, H194, H195, H196, H197, H198, H199, H200, H201, H202, H203, H204, H205, H206, H207, H208, H209, H210, H211, H212, H213, H216, H218, H219, H220, H221, H222, H223, H224, H225, H227, H228, H229, H230, H231, H232, H233, H235, H236, H237, H238, H239, H240, H241, H243, H244, H245, H246, H247, H248, H249, H250, H251, H252, H253, H254, H255, H256, H257, H258, H259, H260, H261, H262, H263, H264, H265, H266, H267, H268, H269, H270, H271, H272, H273, H274, H277, H282, H283, H284, H285, H286, H295, H296, H297, H298, H299, H300, H301, H302, H303, H304, H305, H306, H307, H308, H309, H310, H311, H313, H314, H315, H316, H317, H318, H319, H320, H321, H322, H323, H324, H325, H326, H327, H328, H329, H330, H331, H332, H333, H334, H335, H336, H337, H338, H339, H340, H341, H342, H343, H344, H345, H346, H348, H349, H350, H351, H352, H353, H354, H355, H356, H357, H358, H359, H360, H361, H362, H363, H364, H365, H366, H367, H368, H369, H370, H371, H372, H373, H374, H375, H376, H377, H378, H379, H380, H381, H382, H383, H384, H385, H386, H387, H388, H389, H390, H391, H392, H393, H394, H397, H398, H399, H400, H401, H402, H404, H405, H407, H408, H409, H410, H413, H414, H415, H417, H418, H419, H420, H421, H422, H423, H424, H425, H426, H427, H428, H429, H430, H431, H432, H433, H434, H435, H436, H437, H438, H439, H440, H441, H442, H443, H444, H445, H446, H447, H449, H451, H452, H453, H454, H456, H457, H458, H459, H461, H462, H463, H464, H465, H466, H468, H469, H470, H471, H472, H473, H475, H476, H478, H479, H480, H481, H490, H491, H492, H493, H497, H504, H505, H506, H507, H508, H509, H510, H511, H512, H513, H514, H515, H516,	specified in column (1) shown approximately within the area identified by a solid green line on the hedgerow plans

H517, H518, H519, H520, H521, H522, H523, H524, H525, H526, H527, H528, H529, H530, H531, H532, H533, H534, H535, H536, H537, H538, H539, H540, H541, H545, H547, H552, H554, H555, H556, H557, H558, H559, H560, H561, H562, H563, H564, H565, H566, H567, H568, H569, H570, H571, H572, H573, H574, H575, H576, H577, H578, H579, H580, H581, H582, H583, H584, H585, H586, H587, H589, H590, H591, H593, H594, H595, H596, H597, H598, H599, H600, H601, H602, H603, H604, H605, H606, H607, H608, H609, H610, H611, H612, H613, H614, H615, H618, H619, H620, H625	

PART 2

REMOVAL OF POTENTIALLY IMPORTANT HEDGEROWS

(1) *Hedgerow reference on the hedgerows plan*	*(2)* *Extent of removal*
H016, H017, H018, H019, H020, H021, H022, H032, H034, H078, H079, H082, H085, H086, H096, H097, H098, H100, H109, H110, H115, H116, H117, H118, H119, H121, H122, H124, H125, H126, H127, H129, H131, H133, H135, H137, H138, H139, H140, H148, H149, H151, H152, H153, H154, H155, H164, H165, H166, H167, H168, H169, H170, H171, H172, H173, H174, H175, H176, H214, H215, H217, H226, H234, H242, H275, H276, H278, H279, H280, H281, H287, H288, H289, H290, H291, H292, H293, H294, H312, H347, H395, H396, H403, H406, H411, H412, H416, H455, H460, H467, H474, H477, H482, H483, H484, H485, H486, H487, H488, H489, H494, H495, H496, H498, H499, H500, H501, H502, H503, H542, H543, H544, H546, H548, H549, H550, H551, H553, H592, H616, H617, H621, H622, H623, H624, H626	Removal of part of each of the potentially hedgerows specified in column (1) shown approximately within the area identified by a solid green line on the hedgerow plans

SCHEDULE 11

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
Book of reference	EN010162/APP/4.3E	6	April 2026
Concept design parameters and principles	EN010162/APP/7.14D	5	April 2026
Environmental	EN010162/APP/6.2	1	June 2025

statement			
Revisions to the environmental statement—			
Volume 2, Chapter 5: Development Description	EN010162/APP/6.2.5A	2	April 2026
Volume 2, Chapter 7: Landscape and Visual Impact Assessment	EN010162/APP/6.2.7B	3	April 2026
Volume 2, Chapter 8: Ecology and Biodiversity	EN010162/APP/6.2.8D	5	April 2026
Volume 2, Chapter 9: Water Resources	EN010162/APP/6.2.9A	2	February 2026
Volume 2, Chapter 10: Ground Conditions and Land Contamination	EN010162/APP/6.2.10B	3	February 2026
Volume 2, Chapter 11: Cultural Heritage and Archaeology	EN010162/APP/6.2.11A	2	April 2026
Volume 2, Chapter 12: Noise and Vibration	EN010162/APP/6.2.12A	2	April 2026
Volume 2, Chapter 14: Traffic and Transport	EN010162/APP/6.2.14B	3	March 2026
Volume 2, Chapter 15: Climate Change	EN010162/APP/6.2.15B	3	February 2026
Volume 2, Chapter 17: Agricultural Land	EN010162/APP/6.2.17A	2	January 2026
Volume 2, Chapter 18: Recreation	EN010162/APP/6.2.18C	4	April 2026
Volume 2, Chapter 19: Interrelationships	EN010162/APP/6.2.19B	3	February 2026
Volume 3, Chapter 1: Introduction Figures	EN010162/APP/6.3.1A	2	August 2025
Volume 3, Chapter 2: Environmental Impact Assessment Figures	EN010162/APP/6.3.2A	2	August 2025
Volume 3, Chapter 4: Alternatives Figures (Part 1 and 2)	EN010162/APP/6.3.4A	2	August 2025
Volume 3, Chapter 5: Development Description Figures 5.1 – 5.2 (Part 1 of 3)	EN010162/APP/6.3.5D	5	April 2026
Volume 3, Chapter 5: Development Description Figures 5.3 – 5.4 (Part 2 of 3)	EN010162/APP/6.3.5D	5	April 2026
Volume 3, Chapter 5: Development Description Figures 5.5 – 5.21 (Part 3 of 3)	EN010162/APP/6.3.5C	4	April 2026
Volume 3, Chapter 7: Landscape and Visual	EN010162/APP/6.3.7A	2	August 2025

Impact Assessment Figures (Parts 1 to 6)			
Volume 3, Chapter 9: Water Resources Figures	EN010162/APP/6.3.9A	2	August 2025
Volume 3, Chapter 10: Ground Conditions Figures	EN010162/APP/6.3.10A	2	August 2025
Volume 3, Chapter 11: Cultural Heritage and Archaeology Figures 11.1 – 11.5	EN010162/APP/6.3.11B	3	January 2026
Volume 3, Chapter 12: Noise and Vibration Impact Assessment Figures	EN010162/APP/6.3.12A	2	August 2025
Volume 3, Chapter 13: Socio-Economics and Tourism Figures	EN010162/APP/6.3.13A	2	August 2025
Volume 3, Chapter 14: Traffic and Access Figures 14.1 – 14.7	EN010162/APP/6.3.14C	4	April 2026
Volume 3, Chapter 17: Agricultural Land Figures	EN010162/APP/6.3.17A	2	August 2025
Volume 3, Chapter 18: Recreation Figures 18.1 – 18.4	EN010162/APP/6.3.18C	4	April 2026
Volume 4, Appendix A2.1: Cumulative Assessment Stages 1 and 2	EN010162/APP/6.4.2.1D	5	April 2026
Volume 4, Appendix A4.1: Public Rights of Way Strategy	EN010162/APP/6.4.4.1B	3	February 2026
Volume 4, Appendix A7.5: Non-significant effects	EN010162/APP/6.4.7.5A	2	February 2026
Volume 4, Appendix 8.3: Habitats and Vegetation Baseline	EN010162/APP/6.4.8.3C	4	February 2026
Volume 4, Appendix A8.7: Great Crested Newt Baseline	EN010162/APP/6.4.8.7A	2	February 2026
Volume 4, Appendix A8.13: Biodiversity Net Gain Assessment	EN010162/APP/6.4.8.13D	5	April 2026
Volume 4, Appendix A9.2: Water Framework Directive Assessment	EN010162/APP/6.4.9.2A	2	August 2025
Volume 4, Appendix A11.2: Heritage Settings Assessment Scoping Exercise	EN010162/APP/6.4.11.2B	3	February 2026
Volume 4, Appendix	EN010162/APP/6.4.11.4A	2	January 2026

A11.4 Phase 1 Geophysics Results Volume 4, Appendix A11.4 Phase 2 Geophysics Results Volume 4, Appendix A14.1: Transport Statement Volume 4, Appendix A14.1: Transport Statement Appendix A (Figures) Appendix B (Collision Data) Appendix C (Traffic Survey Data) Appendix G (Abnormal Load Report) Volume 4, Appendix A14.1: Transport Statement Appendix E (Passing Place Drawings) Volume 4, Appendix A14.1: Transport Statement: Appendix D (Site Access Drawings) Appendix F (Construction Trip Generation Calculation) Volume 4, Appendix A14.2: Outline Travel Plan Volume 4, Appendix A15.1: Lifecycle Greenhouse Gas Evaluation	EN010162/APP/6.4.11.5A EN010162/APP/6.4.14.1B EN010162/APP/6.4.14.1A EN010162/APP/6.4.14.1C EN010162/APP/6.4.14.1B EN010162/APP/6.4.14.2A EN010162/APP/6.4.15.1B	2 3 2 4 3 2 3	February 2026 March 2026 January 2026 April 2026 March 2026 February 2026 February 2026
Flood risk assessment	EN010162/APP/6.4.9.1C	4	February 2026
Outline Drainage Strategy	EN010162/APP/6.4.9.3	1	February 2026
Hedgerow plans	EN010162/APP/2.14	1	June 2025
Land plans	EN010162/APP/2.2B	3	December 2025
Outline archaeological mitigation strategy	EN010162/APP/6.4.11.8C	4	March 2026
Outline construction environmental management plan	EN010162/APP/6.4.5.3D	5	March 2026
Outline construction traffic management plan	EN010162/APP/6.4.5.2E	6	April 2026
Outline decommissioning and	EN010162/APP/6.4.5.6C	4	March 2026

restoration plan			
Outline fire safety management plan	EN010162/APP/6.4.5.4D	5	April 2026
Outline landscape and ecological management plan	EN010162/APP/6.4.5.1F	7	April 2026
Outline landscape and ecological management plan appendix	EN010162/APP/6.4.5.1.1C	4	April 2026
Outline operational environmental management plan	EN010162/APP/6.4.5.5E	6	April 2026
Outline recreational routes management plan	EN010162/APP/6.4.18.1C	4	April 2026
Outline skills, supply chain and employment plan	EN010162/APP/6.4.13.2A	2	February 2026
Outline soil management plan	EN010162/APP/6.4.17.2B	3	February 2026
Public rights of way and permissive routes plan	EN010162/APP/2.4C	4	April 2026
Streets and access plan	EN010162/APP/2.8A	2	August 2025
Traffic regulation measures plan	EN010162/APP/2.13	1	June 2025
Works plans	EN010162/APP/2.3A	2	August 2025

SCHEDULE 12

Article 42

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence 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; and

(c) any objections 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 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 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; and

(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 13

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, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2.—(1) 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; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.

part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

(c) water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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 14 (temporary closure of 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

(**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).

between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this 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) of this Part of this Schedule, 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 of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) of this Part of this Schedule.

(5) Nothing in this paragraph 8 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 8 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 9, 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) of this Part of this Schedule.

(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) of this Part of this Schedule; 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) of this Part of this Schedule, 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 undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(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 33 (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.

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. 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).

16. 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.

17. 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 RAILWAY INTERESTS

18. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 32 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

19. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(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; and

"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 of the Order.

20.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

21.—(1)

(2) Save for the case of unforeseen events or emergency 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 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.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph 21, 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).

(5) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

22.—(1) The undertaker must before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with

the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph 22, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

23.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 22(4) of this Part of this Schedule 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 22 of this Part of this Schedule;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

24. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

25. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

26.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 22(3) of this Part of this Schedule, 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 26 and paragraph 27(a) of this Part of this Schedule, 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 26.

27. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 22(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 22(4) of this Part of this Schedule including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

28.—(1) In this paragraph 28—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used

by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph 28 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 22(1) of this Part of this Schedule for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 22(1) of this Part of this Schedule) 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 22(1) of this Part of this Schedule has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development, the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph 28 to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 23 of this Part of this Schedule.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 32(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph 28 (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 27(a) of this Part of this Schedule any modifications to Network Rail's apparatus under this paragraph 28 shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph 28 the reference in article 42 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

29. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

30. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

31. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

32.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 47 (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;

(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.

(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 32—

"the relevant costs" means the costs, losses and expenses (but excluding loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

33. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 32 of 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).

34. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

35. The undertaker and Network Rail may enter into agreements, 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 35.

36. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

37. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 6 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

38. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

39. In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 28 of this Part of this Schedule) the provisions of article 42 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the

application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 4

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application

40.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

41. Where the terms defined in this Part of this Schedule are inconsistent with the terms defined in article 2 (interpretation) of this Order the former prevail.

(1) In this Part of this Schedule—

"as built information" means one digital copy of the following information—

(a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 or any successor document;

(b) list of suppliers and materials used and test results and (where in the opinion of National Highways a specified work may have a materially adverse effect on any part of the highways drainage system maintained by National Highways) CCTV surveys;

(c) as constructed information for any utilities discovered or moved during the works;

(d) method statements for the works carried out;

(e) organisation and methods manuals for all products used;

(f) test results and records as required by the detailed design information and during construction phase of the project; and

(g) other such information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highways' Asset Data Management Manual as is in operation at the relevant time;

"bond" means a bond in the form as detailed in Form 1 contained in paragraph 54 of this Part of this Schedule (or substantially in such form) duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

"the bond sum" means 200% of the cost of the carrying out the specified works or such other sum agreed between the undertaker and National Highways to be provided to National Highways in the form of—

(a) a bond;

(b) a cash surety; or

(c) where agreed by National Highways a combination of a bond and cash surety;

"the cash surety" means a cash deposit to be paid by the undertaker into an account specified by National Highways;

"condition survey" means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the specified

works and further to include a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by a specified works;

"contractor" means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

"the DBFO contract" means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order limits or any successor or replacement contract that may be current at the relevant time;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to the development—

(a) regime of California Bearing Ratio testing;

(b) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;

(c) proposed departures from DMRB standards;

(d) utilities diversions;

(e) topographical survey;

(f) health and safety information including any asbestos survey required by GG105 (asbestos management) or any successor document;

(g) Technical approval of highway structures under CG300 of DMRB; and

(h) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"the highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

"highways structure" means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to the trunk road;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of a specified work as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of a specified works;

"Provisional Certificate" means the certificate of completion relating to the specified works issued by National Highways in accordance with paragraph 47 confirming it considers the specified works to be substantially complete;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and "road space bookings shall be construed accordingly";

"specified works" means so much of any work, including but not limited to highway works, street works and surveys authorised by this Order, including any maintenance of that work, as is undertaken on the strategic road network or land in which National Highways has an interest and "specified work" shall be construed accordingly;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures, drainage infrastructure, street furniture, verges and vegetation and all other highway assets together with all land, apparatus and rights located in on over or under the highway for which National Highways is the highway authority; and

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991 (or such updated or revised legislation as may come into force from time to time).

General

42.—(1) The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways have been appointed the highway operations and maintenance contractor.

(2) In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of this Schedule but for the purposes of any approvals required under this Part of this Schedule the undertaker shall liaise directly with National Highways.

(3) Notwithstanding the limits of deviation permitted pursuant to article 3(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under or over the strategic road network unless such works are agreed in writing with National Highways at the discretion of National Highways.

(4) Notwithstanding the powers granted to the undertaker pursuant to this Order, if the carrying out of any specified works require any works to be carried out to the strategic road network, excluding the works authorised in relation to Schedule 3 (streets subject to street works) and Schedule 4 Part 2 (temporary alteration of layout), the undertaker must enter into an agreement with National Highways prior to the commencement of any such work.

(5) References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

43. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior Approvals

44.—(1) The specified works must not commence until—

(a) the programme of works has been approved by National Highways;

(b) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highway—

(i) the detailed design information;

(ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways; and

(iii) the details of the level of apparatus specification and method statement including details of works, equipment and locations;

(c) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 46 of this Part of this Schedule;

(d) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of any specified works has been supplied to National Highways;

(e) the condition survey including CCTV drainage survey and regime of monitoring of the National Highways assets or structures, National Highways considers will be affected by the specified works has been agreed in writing by National Highways; and

(f) the CASS01 has been approved by National Highways.

(2) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to paragraph 44(1)(e) of this Schedule before the first condition survey is conducted.

(3) The undertaker must not exercise—

(a) article 5 (power to maintain the authorised development);

(b) article 10 (street works);

(c) article 12 (power to alter layout, etc., of streets);

(d) article 14 (temporary prohibition, restriction and diversion of use of streets and public rights of way);

(e) article 15 (permanent closure of public rights of way);

(f) article 16 (access to works)

(g) article 18 (traffic regulation measures);

(h) article 19 (discharge of water);

(i) article 20 (protective works to buildings);

(j) article 21 (authority to survey and investigate the land);

(k) article 22 (compulsory acquisition of land);

(l) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);

(m) article 25 (private rights over land)

(n) article 27 (acquisition of subsoil or airspace only)

(o) article 31 (temporary use of land for constructing the authorised development);

(p) article 32 (temporary use of land for maintaining the authorised development); or

(q) article 39 (felling or lopping of trees and removal of hedgerows) of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.

(4) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (3) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (3).

(5) Any approval or consent of National Highways required under this paragraph—

(a) must not be unreasonably withheld;

(b) must be given in writing; and

(c) may be subject to any conditions as National Highways considers necessary.

(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 44(1) of this Part.

Construction of the specified work

45.—(1) The undertaker must give National Highways 3 months notice in writing of the date on which the specified works, will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 44(1) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force save to the extent that any departures or exceptions from those standards apply which have been approved by National Highways; and

(c) any conditions of National Highways notified by National Highways to the undertaker pursuant to paragraph 44(5)(c) of this Part of this Schedule.

(4) The undertaker must ensure that (where possible) without entering the highway—

(a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified works; and

(b) the specified works are carried out without disturbance to the highways and so that the highway remains open for traffic at all times unless otherwise agreed with National Highways.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to any part of the specified works and all land in which National Highways has an interest for the purposes of inspection and supervision of the works .

(6) If any part of any specified works are constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, any highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents cause damage to the strategic road network then National Highways may by notice require the undertaker, at its own expense to remedy the damage.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

(9) Nothing in this Part of this Schedule prevents National Highways from, carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with the carrying out or maintenance of the authorised development without prior

notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover from the undertaker any expenditure it reasonably incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations existing utilities must be constructed to the satisfaction of National Highways. If the diversion or protection requires the breaking open and reinstatement of the strategic road network, the undertaker must enter into an agreement with National Highways prior to such work being carried out.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 44(1)(a) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

(12) For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

Payments

46.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to any specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraph 44(1);

(b) the supervision of a specified works;

(c) the checking and approval of the information required to determine approvals under this Order;

(d) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;

(e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

(f) any value added tax which is payable by National Highways in respect of such costs and expenses for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs, prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payments referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes its costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub paragraph (1) above, within 91 days of the undertaker notifying National Highways that the specified works has been completed.

(6) Within 28 days of the issue of the final account—

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; and

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Completion of a specified work

47.—(1) Within 28 days of the completion of any specified works, the undertaker must arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622.

(2) If the re-survey carried out pursuant to paragraph 47(1) indicates that any damage has been caused to structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing, and the undertaker must carry out the remedial works at its own cost and in accordance with the approved scheme and such programme as National Highways may require.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme pursuant to paragraph 47(2) or fails to submit a scheme for remedial works to National Highways or fails to carry out any remedial works in accordance with paragraph 47(6)(b), National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 47(1), give notice in writing that National Highways will remedy the damage identified in the re-surveys and National Highways may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing.

(5) As soon as the undertaker considers that the Provisional Certificate may be properly issued it must apply to National Highways for the Provisional Certificate.

(6) Following an application for a Provisional Certificate in accordance with paragraph 47(5), National Highways must as soon as reasonably practicable—

(a) inspect the specified works; and

(b) provide the undertaker with a written list of works that are required for the Provisional Certificate to be issued or confirmation that no further works are required for this purpose.

(7) Within 28 days of the completion of any specified works, the undertaker must submit to National Highways the as built information, both in hard copy and electronic form.

(8) When the specified works incorporating the approved remedial works under sub-paragraph 47(6)(b) and remedial works in accordance with paragraph 47(2) have been completed to the satisfaction of National Highways and the as built information has been provided to National Highways, National Highways must issue the Provisional Certificate.

(9) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified works following its completion that the undertaker may from time to time carry out.

(10) Following the issue of the Provisional Certificate, National Highways shall return the bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

Security

48.—(1) The specified works must not commence until the undertaker procures that the specified works are secured by the bond sum to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

Insurance

49. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use by the undertaker.

Indemnity

50. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with—

(a) the construction or maintenance or use of the specified works; or

(b) the exercise of or failure to exercise any power under this Order,

and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

51.—(1) The undertaker must maintain in good repair and condition the specified works and any other apparatus connected with the specified works.

(2) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(3) The undertaker must so far as possible carry out all maintenance, repair and other works of the specified works without disturbance to the strategic road network. If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(4) During any maintenance works, the undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

Land

52. The undertaker must not under the powers of this Order—

(a) acquire or use land forming part of;

(b) acquire new or existing rights over; or

(c) seek to impose or extinguish any restrictive covenants over,

any part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

Expert Determination

53.—(1) Article 42 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Form 1

54. Form 1 as referred to in paragraph 41:

"BOND AGREEMENT

THIS BOND is made as a deed BETWEEN the following parties

PARTIES

1. The Undertaker: [ ], whose main office is at [ ]

2. The Guarantor: [ ], with company number [ ] and whose office for receipt of any claims is [ ]

3. The Beneficiary: National Highways Limited (company registration number 09346363) having its registered office at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ

WHEREAS

(a) Pursuant to the [ ] Order [ ] (the Order), the Undertaker is permitted to carry out the Specified Works as defined in the Order upon and subject to the terms and conditions therein set out.

(b) The Guarantor has agreed with the Beneficiary at the request of the Undertaker to guarantee the performance of the obligations of the Undertaker contained in the Order in accordance with the terms and conditions of this Bond subject to the limitation set out in clause 2.

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the Beneficiary that if the Developer at any time:

(a) becomes insolvent and for the purposes of this Guarantee Bond insolvent shall mean the Developer:

(i) has an administration order made against it or has an administrator appointed over it;

(ii) has an administrative receiver appointed over its assets;

(iii) has a winding up order made against it or a liquidator appointed over it (except for the purpose of solvent amalgamation or reconstruction);

(iv) enters into an arrangement, compromise or composition with its creditors (including, but not limited to, becoming subject to a moratorium under Part A1 of the Insolvency Act 1986); or

(v) otherwise becomes insolvent for the purposes of the Insolvency Act 1986;

(b) fails to pay an amount that is properly due to National Highways in accordance with the Order; or

(c) is otherwise in breach of the Order,

the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages sustained by the Beneficiary as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Order and taking into account all sums due or to become due to the Undertaker.

2. The maximum aggregate liability of the Guarantor and the Developer under this Bond shall not exceed the Bond Sum (as set out in the Schedule) but, subject to such limitation and to clause 4, the liability of the Guarantor shall be co-extensive with the liability of the Undertaker under the Order.

3. The Guarantor shall not be discharged or released by any alteration of any of the items, conditions and/or provisions of the Order and/or in the extent or nature of the Specified Works and no allowance of time or other forbearance or indulgence by the Beneficiary under or in respect of the Order or the Specified Works shall in any way release, reduce or affect the liability of the Guarantor under this Bond.

4. Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Order which has occurred and in respect of which a claim in writing, and containing particulars of such breach has been made upon the Guarantor before Expiry.

5. The Undertaker having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Beneficiary or the Guarantor against the Undertaker) to perform and discharge the obligations on its part set out in the Order.

6. This Bond and the benefits thereof may not be assigned by the Beneficiary without the prior written consent of the Guarantor and the Undertaker to any party to whom the benefit of the Order is assigned although the Beneficiary may assign to a successor body/organisation without the consent of the Guarantor and the Undertaker.

7. The parties to this Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it except pursuant to any assignment in accordance with clause 6 above.

8. This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

SCHEDULE TO BOND AGREEMENT

Bond Sum: shall have the same meaning as in the Order and shall be in the sum of [£] [amount in words] for the period until the Expiry (as defined in the Order) for the Specified Works;

Expiry: The Bond Sum shall be reduced as follows within 20 working days of the issue of the Provisional Certificate, the Beneficiary shall release the Guarantor in writing from its obligations under the terms of this Bond save insofar as any claim or claims have been made against the Guarantor or liability on its part has arisen under this Guarantee Bond before that date in which case the Beneficiary will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for and/or arising from and/or in connection with the Specified Works."

PART 5

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

55. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

56. In this Part—

"commence" has the same meaning as in article 2 (interpretation) of this Order and commencement shall be construed to have the same meaning;

"construction" includes execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" must be construed accordingly;

"drainage authority" means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(**a**) the Lead Local Flood Authority or Trent Valley Internal Drainage Board (or a successor board) as the case may be;

"drainage work" means any ordinary watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

"ordinary watercourse" has the meaning given in the Land Drainage Act 1991(**b**);

"plans" includes sections, drawings, specifications and method statements; and

(**a**) 1991 c. 59.
(**b**) 1991 c. 59, section 72(1).

"specified work" means so much of any work or operation authorised by this Order 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.

57.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 56 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under sub-paragraph (1).

(3) Any approval of the drainage authority required under this paragraph 57—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or for the prevention of flooding or pollution or discharge of environmental functions set out in Section 61A of the Land Drainage Act 1991.

58. Without limiting paragraph 57 of this Part of this Schedule, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that the efficiency of any drainage work for flood defence purposes and land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

59.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 58 of this Part of this Schedule, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing

consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

60.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work or protective work maintain in good repair and condition and free from obstruction any drainage work that is situated within the order limits held by the undertaker for the purposes of or in connection with the specified work and any protective work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any specified work or protective work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any specified work or protective work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph 60 does not apply to—

(a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

61. If by reason of the construction of any specified work or protective work or of the failure of any such specified work or protective work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker 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) If by reason of construction of the specified works the drainage authority's access to land drainage infrastructure, flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the drainage authority to maintain the land drainage infrastructure, flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

63. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans under this Part;

(b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and

(c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work or protective work.

64.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or

(c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage the extent to which 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.

(3) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker (such agreement not to be unreasonably withheld or delayed).

65. 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.

66. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 42 (arbitration).

PART 6

FOR THE PROTECTION OF CADENT GAS LTD AS GAS UNDERTAKER

Application

67. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

68.—(1) In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections (including transformed rectifiers and any associated groundbed or cables), cables marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes

operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as is given in article 2(1) of the 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 development and construction of any works authorised by this Schedule;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

"commence" and "commencement" means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development including (but not limited to) any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the erection of construction plant and equipment, other than erection of fencing to site boundaries or marking out of site boundaries, installation of amphibian and reptile fencing, or environmental mitigation measures, and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent's apparatus that may be caused by the carrying out, maintenance or use of the authorised development;

"rights" includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

(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 73(2) of this Part of this Schedule or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 73(2) of this Part of this Schedule or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent Assets.

On Street apparatus

69.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 70, 74, and 76 of this Part of this Schedule; and

(b) where sub-paragraph (2) applies, paragraphs 73 and 74 of this Part of this Schedule.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 33 (statutory undertakers) of the Order which shall not apply to Cadent.

Apparatus of Cadent in stopped up streets

70.—(1) Where any street is stopped up under article 14 (temporary prohibition, restriction and diversion of use of streets and public rights of way), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph 70 shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 73 of this Part of this Schedule.

(2) Subject to sub-paragraph (3), and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 14 (temporary prohibition, restriction and diversion of use of streets and public rights of way) or Schedule 4 (alteration of streets), Cadent will be at liberty at all times and at Cadent's own risk to take reasonable access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

(3) In taking access pursuant to sub-paragraph (2), Cadent must—

(a) comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and

(b) comply with all relevant health and safety legislation, guidance, protocols and procedures.

Protective works to buildings

71.—(1) The undertaker must exercise the powers conferred by article 20 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good

such damage or restoring the supply and, subject to sub-paragraph (2) shall pay compensation to Cadent for any reasonable loss sustained by it.

(2) Nothing in this paragraph 71 imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment requirement under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

72.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement, excepting in respect of the exercise of article 24 to implement the works specified in column 2 of Schedule 8 in plot number 2/2 in which case Cadent will not obstruct those works and the protections in this Part of this Schedule apply to the apparatus in that plot and access to that apparatus.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 74 or any other paragraph of this Part of this Schedule, will be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 73 do not apply, the undertaker must—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired

land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

73.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 74(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such position as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

74.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent (in Cadent's reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to

which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 80 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

75.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(7) Where Cadent reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph 75, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 74 and 75 of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 74(2) of this Part of this Schedule.

(9) Nothing in this paragraph 75 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 75 will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 77 of this Part of this Schedule.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances, and sub-paragraph (13) at all times.

(12) In this paragraph 75, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(13) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22" and HSE's "HS(~G)47 Avoiding Danger from underground services.

Expenses

76.—(1) Subject to the following provisions of this paragraph 76, the undertaker must pay to Cadent on demand, all documented charges, costs and expenses reasonably anticipated or reasonably and properly incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably and properly incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all reasonable costs (including professional fees) incurred by Cadent as a consequence of Cadent—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 73(3) of this Part of this Schedule if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(g) any watching brief pursuant to paragraph 75(6) of 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 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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where Cadent demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), Cadent must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent and Cadent shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).

Enactments and agreements

77. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

78.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 73(2) of this Part of this Schedule or Cadent makes requirements for the protection or alteration of apparatus under paragraph 75 of this Part of this Schedule, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic

execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

79. If in consequence of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction (in Cadent's reasonable opinion). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access before materially obstructing such access.

Arbitration

80. Save for differences or disputes arising under paragraphs 73(2) and 73(4) of this Part of this Schedule any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

Notices

81. Notwithstanding article 44 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 75(1) of this Schedule must be sent via email to—

Toby.Feirn@cadentgas.com,

or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

82.—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 92(3)b).

Interpretation

83. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(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 of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means —

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus; and

(c) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus constructed as part of the Proposed NGET Projects, whether temporary or permanent ("Proposed NGET Projects apparatus");

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and

for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission Plc Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“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;

"Proposed NGET Projects" means the SCRE/WRRE Project

"Proposed NGET Projects Sites" include —

(a) land on which any Proposed NGET Projects apparatus is situated; and

(b) land on which Proposed NGET Projects apparatus is anticipated to be situated (in so far as the same has at any time been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 88(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 88(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 National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

84. Except for paragraphs 85 (apparatus in stopped up streets), 90 (retained apparatus: protection), 91 (expenses) and 92 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in closed streets

85.—(1) Where any street is closed under article 10 (street works), article 12 (power to alter layout, etc., of streets), article 13 (construction and maintenance of altered streets) article 14 (temporary prohibition, restriction or diversion of use of streets and public rights of way) article 15 (Permanent closure of public rights of way), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 88 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 90.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of the articles of the Order referred to in paragraph 85(1), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective works to buildings

86. The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

Acquisition of land

87. (1)Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.

(2) 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 Proposed NGET Projects (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 National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).
.

Removal of apparatus

88.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

(3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 89(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

89.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 96 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

90.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the specified works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues;

(h) a ground monitoring scheme, where required, and

(i) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology.

(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 the trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8);

(b) may be given subject to such reasonable requirements as National Grid may have in connection the safe and efficient, commissioning, operation and maintenance of the proposed NGET Projects; and

(c) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the

alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 82 to 84 and 87to 89 apply as if the removal of the apparatus had been required by the undertaker under paragraph 88(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 as a plan under sub-paragraph 9(1).

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

91.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred (where not already paid by the undertaker pursuant to reasonably anticipated charges, costs and expenses) by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 88(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 96 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

92.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 92; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works (excluding the Modified Permitted Preliminary Works) on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—

(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of

commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

93. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

94.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 88(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 90, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

(3) National Grid must supply the undertaker with regular updates in relation to the Proposed NGET Projects and the Proposed NGET Projects Sites including (but not limited to) providing plans for the Proposed NGET Projects and the anticipated programme of works for the Proposed NGET Projects.

Access

95. If in consequence of the agreement reached in accordance with paragraph 87 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

96.—

Save for differences or disputes arising under paragraph 88(2), 88(3) 89(1) and 90 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the

undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 42 (arbitration)

Notices

97. Notwithstanding article 44 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Interaction with the Proposed NGET Projects

98. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Proposed NGET Projects. For the purposes of this paragraph, "reasonable endeavours" means—

(a) undertaking consultation with National Grid Electricity Transmission Plc on detailed design and programming of the authorised works, taking into account such reasonable representations as National Grid Electricity Transmission Plc may provide in relation to proposed plans and timetables ;

(b) having regard to the anticipated programme of works for the Proposed NGET Projects and facilitating a co-ordinated approach to construction programming, land assembly, and the carrying out of the authorised works and the Proposed NGET Projects where reasonably possible;

(c) undertaking consultation on the detailed design and programming of the authorised development to ensure that the design and programme for the authorised development does not unreasonably impede or interfere with the NGET Projects; and

(d) where possible, undertaking the placing of ducting or making provision for the Proposed NGET Projects; and (e) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works.

PART 8

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

99.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 11(3)b).

Interpretation

100. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order save that for the purposes of 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;

"Interference" means interference, disturbance or negative effects to apparatus (including but not limited to cathodic protection systems), generated by the construction, operation or maintenance of the authorised works where such interference is of a level which may adversely affect the safe operation of the apparatus in the reasonable opinion of National Gas;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas, including to construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and/or

(b) will or may be situated within 1,000 metres measured in any direction of any cathodic protection systems, the removal of which has not been required by the undertaker under paragraph 102(2) and which may result in Interference; and/or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and/or

(d) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties".

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

101. Except for paragraphs 104 (retained apparatus: protection of gas undertakers), 105 (expenses) and 106 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

102..—(1) Where any street is stopped up under article 15 (permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up and restriction of use of streets)], National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

103. The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas

Acquisition of land

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 National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such

deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 104 or any other paragraph of this Part of this Schedule, shall 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 National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 103(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this 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 National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

107.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against Interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any

measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 98 to 103 of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 105(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 108 of this Part.

Expenses

108.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 105(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

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 specified 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 specified works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any

third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit 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 106; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with Paragraph 119(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas 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 National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

111.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 105(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 107, the undertaker shall use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

112. If in consequence of the agreement reached in accordance with paragraph 101(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

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 National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 42 (arbitration).

Notices

114. Notwithstanding article 44 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 107 must be submitted using the LSBUD system (https://lsbud.co.uk/) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 9

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

115. For the protection of National Grid Electricity Distribution (East Midlands) Plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (East Midlands) Plc, 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 required 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 line or electrical plant as defined in the Electricity Act 1989(**a**), 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 number 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

"undertaker" means Elements Green Trent Limited or such other person as has the benefit of the Order,

other terms have the meaning given in article 2 (interpretation).

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.

118. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 10 (street works), article 12 (power to alter layout, etc., of streets), article 13 (construction and maintenance of altered streets), article 14 (temporary prohibition, restriction or diversion of use of streets and public rights of way), article 15 (Permanent closure of public rights of way), NGED 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.

No acquisition except by agreement

119. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

(**a**) 1989 C. 29. The definition of "electricity plant" (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

Removal of apparatus

120.—(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, it must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights, and any necessary third party consent or approvals for the construction of alternative apparatus in other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then the undertaker shall use reasonable endeavours to secure alternative rights in the land in which the alternative apparatus is to be constructed, and if the undertaker is unable to obtain such rights, 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 Electricity Act 1989 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 122.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 122, 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 by the undertaker to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the

construction or removal of apparatus in any land 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 122; and

(b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

121.—(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 122.

(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 facilities and rights in respect of 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. 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

122.—(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 117, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) 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 works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third 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 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 117(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) 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

123.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses reasonably incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Liability

124.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

(a) bear and pay the cost reasonably 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 act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(4) 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.

Expert determination

125.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation 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 28 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.

Co-operation

126.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires the removal and/or diversion of apparatus under paragraph 117 or NGED makes requirements for the protection or alteration of apparatus under paragraph 119, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic operation of NGED's undertaking and NGED must use its reasonable endeavours to co-operate with the undertaker for that purpose and for the purpose of the safe and efficient delivery of the authorised development.

(2) For the avoidance of doubt whenever NGED'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 NGED, it must not be unreasonably withheld or delayed.

Access

127. If in consequence of the agreement reached under paragraph 116 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGED to maintain or use the apparatus no less effectively than was possible before such obstruction.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Elements Green Trent 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 this Order and certified in accordance with article 41 (certificate of plans and documents, etc.) of this Order (certification of plans and documents, etc.) may be inspected free of charge during working hours at the offices of Newark and Sherwood District Council, Castle House, Great North Road, Newark-on-Trent, Nottinghamshire NG24 1BY.

APPENDIX B: OTHER LEGISLATION AND POLICIES

Table 1: Summary of relevant legislation

Relevant legislation
Climate Change Act 2008: The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. **The Climate Change Act 2008 (2050 Target Amendment) Order 2019**: This came into force 27 June 2019 and changed the Government's target for reducing greenhouse gas emissions by 2050 from at least 80% to 100% compared to 1990 levels. **Equality Act 2010**: The Equality Act 2010 establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. **Human Rights Act 1998**: The consideration of the land rights powers requested by the Applicant can engage various relevant articles under the Human Rights Act 1998.
Other relevant legislation
• Acquisition of Land Act 1981 • The Air Quality Directive • Air Quality (England) Regulations 2000 • Air Quality Standards Regulations 2010 (as amended) • The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 • Ancient Monuments and Archaeological Areas Act 1979 • Building Act 1984 and the Building Regulations 2010 • Carbon Budget Order 2021 • Climate Change Act 2008 (Credit Limit) Order 2021 • Compulsory Purchase Act 1965 • Compulsory Purchase (Vesting Declarations) Act 1981 • Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 • Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') • Control of Major Accidents Hazard (COMAH) Regulations 2015 • Control of Pollution Act 1974 • Control of Pollution (Oil Storage) (England) Regulations 2001 • Control of Substances Hazardous to Health (Amendment) Regulations 2004 • The Control of Electromagnetic Fields at Work Regulations 2016

- Countryside and Rights of Way Act 2000
- Electricity Act 1989
- Electricity Safety, Quality and Continuity Regulations 2002
- Environment Act 1995
- Environment Act 2021
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Environmental Impact Assessment Directive 1995
- Environmental Noise (England) Regulations 2006 (as amended)
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environmental Protection Act 1990
- Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016)
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste (England and Wales) Regulations 2005
- Health and Safety at Work etc. Act 1974
- Health and Social Care Act 2012
- Hedgerow Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- The Infrastructure Planning (Decisions) Regulations 2010
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Invasive Alien Species (Enforcement and Permitting) Order 2019
- Land Compensation Act 1961
- Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Localism Act 2011
- Marine and Coastal Access Act 2009
- National Parks and Access to the Countryside Act 1949
- National Parks and Access to the Countryside Act 2000
- Natural Environment and Rural Communities Act 2006
- Neighbourhood Planning Act 2017
- Noise Insultation Regulations 1975
- The Planning Act 2008
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999

- Protection of Badgers Act 1992
- Town and Country Planning Act 1990
- The Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Waste Framework Directive (2008/98/EC)
- Waste (England and Wales) Regulations 2011
- Waste Electrical and Electronic Equipment Regulations 2013
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Water Act 2003
- Water Act 2014
- Water Framework Directive (2000/60/EC)
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Water Industry Act 1991
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Resources Act 1991
- Water Supply (Water Quality) Regulations 2018
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981

Table 2: Development Plan Policies referred to by the applicant or in local impact reports

Plan	Policies
Newark and Sherwood Local Development Framework – Amended Core Strategy DPD (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 ShAP1 – Sherwood Area and Sherwood Forest Regional Park
Newark and Sherwood Local Development Framework – Allocations and Development Management DPD (2013)	Policy DM3 – Developer Contributions and Planning Obligations Policy DM4 – Renewable and Low Carbon Energy Generation Policy DM5 – Design Policy DM7 – Biodiversity and Green Infrastructure Policy DM8 – Development in the Open Countryside Policy DM9 – Protecting and Enhancing the Historic Environment Policy DM10 – Pollution and Hazardous Materials Policy DM12 – Presumption in Favour of Sustainable Development
Nottinghamshire Minerals Local Plan (2021)	Policy SP7 - Minerals Safeguarding, Consultation Areas and Associated Minerals Infrastructure
Nottinghamshire and Nottingham Waste Local Plan (2025)	Policy SP1 – Waste prevention and re-use Policy SP8 – Safeguarding waste management sites

APPENDIX C: ABBREVIATIONS LIST

GREAT NORTH ROAD SOLAR PROJECT EN010162

Appendix C – List of abbreviations

Abbreviation or acronym	Full name/description
AA	appropriate assessment (for the purposes of The Conservation of Habitats and Species Regulations 2017)
AADT	average annual daily traffic flow
ADMDPD	Newark and Sherwood Local Development Framework – Allocations and Development Management DPD (2013
AEoI	adverse effects on integrity
AEP	annual exceedance probability
ALC	agricultural land classification
ANCB	appropriate nature conservation body
AP	affected person
APFP Regs	The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009
AQA	air quality assessment
AQD	European Union Air Quality Directive 2008
AQMA	air quality management area
AQS	Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2007
AQTAG	Air Quality Technical Advisory Group
A	article
ARSI	access required site inspection
ASI	accompanied site inspection
AIA	arboricultural impact assessment
AIL	abnormal indivisible load
BAU	business as usual
BESS	battery energy storage system
BMV	best and most versatile (agricultural land)
BNG	biodiversity net gain
BOAT	byway open to all traffic
BoR	book of reference
BVLOS	beyond visual line of sight
BSMP	battery safety management plan
BS 5228	British Standards Institute BS 5228: (2009 with 2014 amendments)– Code of practice for noise and vibration control on construction and open sites
BS 4142	in British Standards Institute (2014 with 2019 amendments): BS 4142 – Methods for rating and assessing industrial and commercial sound
CTPC	Carlton on Trent Parish Council
CLF	Caunton Lodge Farm
CA	compulsory acquisition
CAH	compulsory acquisition hearing
CA Guidance	Guidance Related to Procedures for the Compulsory Acquisition of Land, DCLG, September 2013
CA Regs	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAA	Civil Aviation Authority

Abbreviation or acronym	Full name/description
CCA2008	the Climate Change Act 2008
CIEEM	Chartered Institute of Ecology and Environmental Management
CEMP	construction environmental management plan
CCGT	combined cycle gas turbines
CNMP	construction noise management plan
CNP	critical national priority
CO2	carbon dioxide
Core Strategy	Newark and Sherwood Amended Core Strategy (2019)
CoCP	code of construction practice
COMAH	The Control of Major Accident Hazard Regulations 2015
CSA	core study area
CPO	compulsory purchase order
CPRE	Campaign to Protect Rural England
CRoWA	the Countryside and Rights of Way Act 2000
CDPP	concept design parameters and principles document
CEcMP	construction ecological management plan
CTMP	construction traffic management plan
CEA	cumulative effects assessment
D	deadline
DAD	design approach document
DAS	design and access statement
DBA	desk-based assessment
DCO	(the) Development Consent Order
Decisions Regulations	Infrastructure Planning (Decisions) Regulations 2010
dDCO	(the) draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DESNZ	Department for Energy Security and Net Zero
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DPD	development plan document
DDSL	Drone Defense Services Ltd
EA	Environment Agency
ECHR	European Convention on Human Rights
EIA	environmental impact assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EL	examination library
EM	(the) Explanatory Memorandum
EMF	electro-magnetic fields
EMG2	East Midlands Gateway Phase 2
EEA	European Economic Area
EPL	European protected species license
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
EPS	European protected species
ES	Environmental Statement

Abbreviation or acronym	Full name/description
ExA	Examining Authority
ExQ1 (or 2, 3)	The ExA's first, second, third rounds of written questions
ESNZ	Energy Security and Net Zero
The Fenwick Order	The Fenwick Solar Farm Order 2026 made 18 February 2026
FSMP	fire safety management plan
FAS	flood alleviation scheme
FRA	flood risk assessment
FC	Forestry Commission
FZ	flood zone
FTE	full time equivalent
GDPR	The General Data Protection Regulations 2018
GIA	the Growth and Infrastructure Act 2013
GHG	Greenhouse Gas
GVA	gross value added
ha	hectare(s)
HGV	heavy goods vehicle
HE	Historic England
HHIA	human health impact assessment
the Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HRA	habitats regulations assessment
HSE	Health and Safety Executive
IAPI	initial assessment of principal issues
IDB	internal drainage board
IEF	important ecological features
IEMA	Institute of Environmental Management and Assessment
IP	interested party
IP Regs	The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015
IROPI	imperative reasons of overriding public interest
ISH	issue specific hearing
JPAG	Joint Parishes Action Group
kgCO2e/kWh	kilograms of carbon dioxide equivalent per kilowatt-hour of electricity consumed
kWh	kilowatt hour
LA	local authority
LEMP	landscape and ecology management plan
LVIA	landscape and visual impact assessment
LCT	landscape character type
LIR	local impact report
LHA	local highways authority
LNR	local nature reserve
LNRS	local nature recovery strategy
LOAEL	lowest observed adverse effect level
LoD	limits of deviation

Abbreviation or acronym	Full name/description
LRT	land rights tracker
LRN	local road network
LSE	likely significant effects
LTP	local transport plan
LVIA	landscape and visual impacts assessment
LWA	land and works agreement
LWS	local wildlife site
MW	megawatt
M&E	Mechancial and electrical plinth relating to Ossington Airfield
MWp	megawatt peak
MGL	Mick George Limited
MHCLG	Ministry for Housing, Communities and Local Government
MAFF	Ministry of Agriculture, Fisheries, and Food
MU(s)	motorised user(s)
NE	Natural England
NGED	National Grid Electricity Distribution (East Midlands) plc
NGET	National Grid Electricity Transmission plc
NGT	National Gas Transmission
NCA	National Character Area
NH	National Highways
NIC	National Infrastructure Commission
NNR	national nature reserve
NSDC	Newark and Sherwood District Council
NSR	Noise sensitive receptors
NCC	Nottinghamshire County Council
NFRS	Nottinghamshire Fire and Rescue Service
NWT	Nottinghamshire Wildlife Trust
NIPA	National Infrastructure Planning Association
NMU(s)	non-motorised user(s)
NDHA	non-designated heritage asset
No.	number
NPA2017	the Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	national policy statement
NPSA	National Policy Statement for Airports
NPSE	Noise Policy Statement for England
North Falls made Order	North Falls Offshore Wind Farm Order 2026 made 14 May 2026
EN-1	Overarching National Policy Statement for Energy
EN-3	National Policy Statement for Renewable Energy Infrastructure
EN-5	National Policy Statement for Electricity Networks Infrastructure
NSIP	Nationally Significant Infrastructure Project
SESG	Norwell Solar Farm Steering Group
MRA	mineral resource assessment
oBSMP	outline battery safety management plan
oAMS	outline archaeological mitigation strategy

Abbreviation or acronym	Full name/description
oCEMP	outline construction environmental management plan
oCTMP	outline construction traffic management plan
oDRP	outline decommissioning and restoration plan
oDS	outline drainage strategy
OEMP	operational environmental management plan
oOEMP	outline operational environmental management plan
oFSMP	outline fire safety management plan
oLEMP	outline landscape and ecological management plan
oSSCEP	outline skills, supply chain and employment plan
oSMP	outline soil management plan
oRRMP	outline recreational routes management plan
PA2008	the Planning Act 2008
PIC	personal injury collision
PCD	policy compliance document
PV	photovoltaic
PEIR	preliminary environmental information report
PM	preliminary meeting
ppSPA	possible potential special protection area
PP	protective provisions
PINs CEA Advice	The Planning Inspectorate Advice on Cumulative Effects Assessment
PRA	preliminary risk assessments
PRoW	public right(s) of way
PSED	public sector equality duty
Rampion 2 DCO	The Rampion 2 Offshore Wind Farm Order 2025
RVAA	residential visual amenity assessment
RVA	residential visual amenity
R6	rule 6 letter
R8	rule 8 letter
RCA	regional character area
R	requirement
rDCO	The ExA's recommended Development Consent Order
RIES	(the) Report on the Implications for European Sites
RR	relevant representations
RSA	road safety audit
RWE	RWE Generational UK Plc
s	section
SSE BESS	Battery energy storage system at Staythorpe
SAC	special area of conservation
SCL	special category land
SM	scheduled monument
SSCEP	skills, supply chain and employment plan
SMR	small modular reactors
SNCB	statutory nature conservation body
SNCI	site of nature conservation interest

Abbreviation or acronym	Full name/description
SoCG	statement of common ground
SoR	statement of reasons
SoS	Secretary of State for Energy Security and Net Zero
SP	statutory party
SPA	special protection area
SPA MMP	special protection area management and monitoring plan
SPP	special parliamentary procedure
SRN	strategic road network
SSSI	site of special scientific interest
SU	statutory undertaker
SuDS	sustainable drainage systems
TA	transport assessment
TP	temporary possession
TS	transport statement
TCPA1990	the Town and Country Planning Act 1990
the Airfield	RAF Ossington former Airfield
TMP	transport management plan
ToR	terms of reference
TP	temporary possession
TPO	tree preservation order
tCO2e	tonnes of carbon dioxide equivalent
TVITB	Trent Valley Internal Drainage Board
UKCP18	United Kingdom Climate Projections 2018
USI	unaccompanied site inspection
UU	unilateral undertaking
VfM	value for money
WebTAG	web-based transport analysis guidance
WFD	Water Framework Directive
WW2	World War 2
2024 WMS	Written Ministerial Statement, ‘Solar and protecting our Food Security and Best and Most Versatile Land’ (May 2024)
WR	written representation
WSI	written scheme of investigation
WWNPS	Waste Water National Policy Statement
Yorkshire Green	The National Grid (Yorkshire Green Energy Enablement Project Development Consent Order 2024
ZTV	zone of theoretical visibility