The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Gate Burton Energy Park

Examining Authority's Report
of Findings and Conclusions

and

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

Examining Authority

Kenneth Stone Bsc Hons Dip TP MRTPI

04 April 2024

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OVERVIEW

File Ref: EN010131

The application, dated 27 January 2023, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on that date.

The applicant is Gate Burton Energy Park Ltd.

The application was accepted for examination on 22 February 2023.

The examination of the application began on 4 July 2023 and was completed on 4 January 2024.

The development proposed comprises the construction, operation, maintenance and decommissioning of ground mounted solar photovoltaic (PV) panel arrays, on-site battery storage and associated infrastructure. The proposal includes associated infrastructure which includes, but is not limited to, access provision and an underground 400kV electrical connection of approximately 7.5km to the Cottam National Grid Substation.

Summary of Recommendation:

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

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The Planning Inspectorate **ERRATA SHEET – Gate Burton Energy Park- File Ref: EN010131**

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security & Net Zero dated 4 April 2024

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

ePage No.	Paragraph	Error	Correction
2	1.3.2	Formatting error- Bold text under figure should be part of the main paragraph	Figure 2 - Location Plan with shading to show Solar and Energy Storage Park in light blue and Grid Connection Corridor in beige [APP-028] below shows the original location plan with highlights to identify the Solar and Energy Storage Park in light blue, which is the area where the main solar arrays, Balance of Solar System Plant (BoSS) and Battery Energy Storage System (BESS) are to be located, and the Grid Connection Corridor (GCC), in beige, which is the area through which the 400kV electrical connection cabling to the substation at Cottam Power Station would be laid.

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the application) for the Gate Burton Energy Park Project (the Proposed Development) reference EN010131 was submitted by Gate Burton Energy Park Ltd (the Applicant) to the Planning Inspectorate (the Inspectorate) on 27 January 2023 under section 31 (s31) of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 (s55) of the PA2008 on 22 February 2023 [PD-002]. This Report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoSESNZ).

1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Department of Levelling Up, Housing and Communities (DLUHC) in its decision to accept the Application for Examination in accordance with s55 of PA2008 [PD-002].

1.1.3. The Proposed Development is for the construction of a generating station. As the proposed generating station is in England, it does not generate electricity from wind, is not an offshore generating station and its capacity is more than 50 megawatts, the Proposed Development falls within s15(2) of the PA2008 and meets the definition of an NSIP set out in s14(1) of the PA2008. As such, the Proposed Development requires development consent in accordance with s31 of the PA2008.

1.1.4. Examination under the Planning Act 2008 (PA2008) is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. The Examination Library (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number e.g. [APP-001]. The reference numbers are used throughout this Report and hyperlinks are included to allow the reader to access them directly.

1.1.5. This Report does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 8 March 2023, Kenneth Stone was appointed as the ExA for the application under s61 and s65 of PA2008 [PD-004].

1.3. THE APPLICATION

Location of the Proposed Development

1.3.1. The location of the Proposed Development is shown in Figure 1 – Location Plan [REP5-006below, the Location Plan [REP5-006] and the final versions of the Land Plans [CR1-014] which include the additional land included as part of a change request detailed at paragraph 1.7.3

below. The site lies within the Lincolnshire County Council (LCC), West Lindsey District Council (WLDC), Nottinghamshire County Council (NCC) and Bassetlaw District Council (BDC) administrative areas and is wholly in England.

Figure 1 – Location Plan [REP5-006]

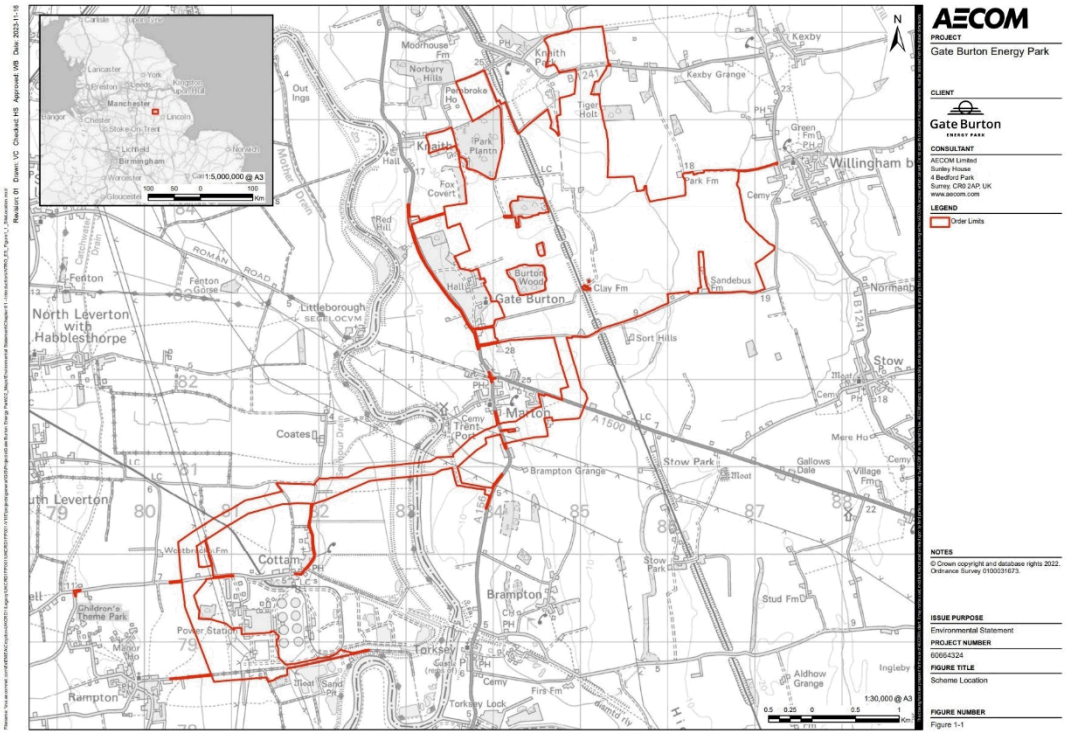
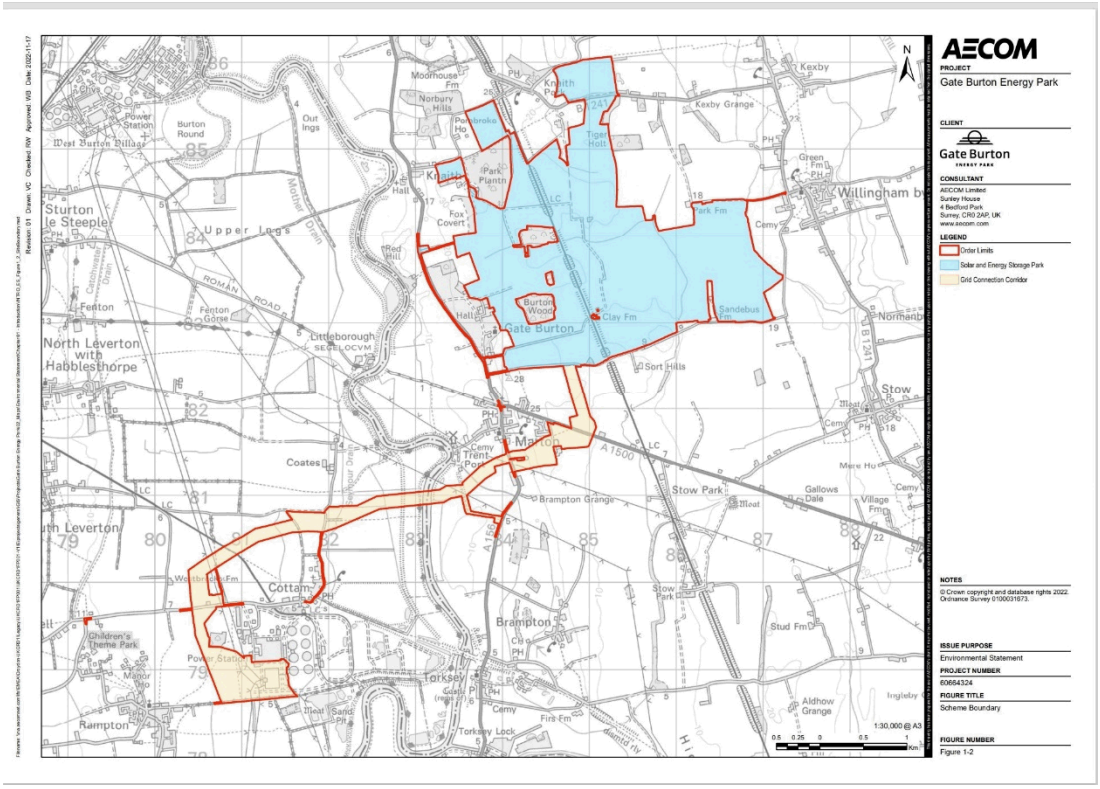


Figure 2 - Location Plan with shading to show Solar and Energy Storage Park in light blue and Grid Connection Corridor in beige [APP-028]

1.3.2. below shows the original location plan with highlights to identify the Solar and Energy Storage Park in light blue, which is the area where the main solar arrays, Balance of Solar System Plant (BoSS) and Battery Energy Storage System (BESS) are to be located, and the Grid Connection Corridor (GCC), in beige, which is the area through which the 400kV electrical connection cabling to the substation at Cottam Power Station would be laid.

Figure 2 - Location Plan with shading to show Solar and Energy Storage Park in light blue and Grid Connection Corridor in beige [APP-028]



1.3.3. Chapter 2 – 'The Scheme', in the Environmental Statement (ES) [APP-011] includes a description of the surrounding area and Chapter 10 – 'Landscape and Visual Amenity' [REP2-010] of the ES provides a detailed description of the baseline condition of the surrounding area. In summary the characteristics of the surrounding area are:

- Agricultural fields interspersed with individual trees, woodlands (including ancient woodlands), hedgerows, linear tree belts, farm access tracks and local transport links.
- A low lying, predominately flat or gently undulating landscape of arable farmland.
- A significant chalk escarpment to the east of the application site affording distant views over the wider landscape.
- A number of small to medium settlements, isolated residential properties and farmsteads.
- Long views to distant horizons are often available.
- Vertical elements associated with Cottam Power Station and West Burton Power Station including cooling towers and power lines and pylons running from the power stations are prominent features.
- The River Trent runs close to the western side of the Solar and Energy Storage Park area and the Grid Connection Corridor linking the Solar arrays to Cottam Power Station crosses it.
- The main A156 runs north south and lies just to the west of the Solar and Energy Storage Park area, between it and the River Trent, with the A1500 running east west a little to the south of the Solar and Energy Storage Park area.

- There are no listed buildings or scheduled monuments within the Application site but there are a number of designated heritage assets in the vicinity including listed buildings and scheduled monuments.

1.3.4. The Order limits comprises approximately 834 hectares (ha) of land, including 652 hectares for the Solar and Energy Storage Park and 182 hectares for the Grid Connection Corridor.

Description of the Proposed Development

1.3.5. The Proposed Development is for the construction, operation, maintenance and decommissioning of ground mounted solar photovoltaic (PV) panel arrays, on-site battery storage and associated infrastructure. The proposal includes associated infrastructure which includes, but is not limited to, access provision and an underground 400kV electrical connection of approximately 7.5km to the Cottam National Grid Substation.

1.3.6. The Proposed Development works comprise:

- **Work No. 1** – a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including – (a) solar panels fitted to mounting structures; and (b) balance of solar system (BoSS) plant.

- **Work No. 2** – a Battery Energy Storage System (BESS) compound including–

  i. BESS units each comprising an enclosure for BESS electrochemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles.
  ii. Transformers and associated bunding.
  iii. Inverters, switch gear, power conversion systems (PCS) and ancillary equipment.
  iv. Containers or enclosures housing all or any of Work Nos. 2(ii) and (iii) and ancillary equipment.
  v. Monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(i) or (iv) or located separately in its own container or enclosure.
  vi. Heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(i), (iv) and (v), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures.
  vii. Electrical cables including electrical cables connecting to Work No. 3.
  viii. Fire safety infrastructure including water storage tanks and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles; and
  ix. Containers or similar structures to house spare parts and materials required for the day-to-day operation of the BESS facility.

- **Work No. 3** – development of an on-site substation and associated works including substation, switch room buildings and ancillary equipment including reactive power units; monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms; and 400 kilovolt harmonic filter compound.

- **Work No. 4** – works to lay high voltage electrical cables, access and construction compounds for the electrical cables including –

  a. Work No 4A: one 400 kilovolt cable circuit connecting Work No. 3 and/or Work No. 5 to Work No. 4B, tunnelling, boring and drilling works for trenchless crossings; laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment.
  b. Work No 4B: one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C, tunnelling, boring and drilling works for trenchless crossings; laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment.
  c. Work No 4C: electrical engineering works within or around the National Grid Cottam substation including the laying and terminating of one 400 kilovolt cable circuit, the installation of one 400 kilovolt generation bay, and ancillary equipment.

- **Work No. 5** – works including electrical cables, including but not limited to electrical cables connecting Works 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS; fencing, gates, boundary treatment and other means of enclosure; works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing; landscaping and biodiversity mitigation and enhancement measures including planting; improvement, maintenance and use of existing private tracks; laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards; laying down of temporary footpath diversions, permissive paths, signage and information boards; earthworks; sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems; construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment; works to divert and underground existing electrical overhead lines.

- **Work No. 6** – construction and decommissioning compounds including areas of hardstanding, car parking, site and welfare offices, canteens and workshops, area to store materials and equipment, storage and waste skips, area for download and turning, security infrastructure, including cameras, perimeter fencing and lighting, site drainage and waste management infrastructure (including sewerage), and electricity, water, wastewater and telecommunications connections.

- **Work No. 7** – office, warehouse and plant storage building comprising, offices and welfare facilities, storage facilities, waste storage within a fenced compound, parking areas, and a warehouse building for the storage of spare parts, operational plant and vehicles.

- **Work No. 8** – works to facilitate access to Work Nos. 1 to 9 including creation of accesses from the public highway, creation of visibility splays, and works to widen and surface the public highway and private means of access.

- **Work No. 9** – areas of habitat management including landscape and biodiversity enhancement measures, habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure, laying down of permissive paths, signage and information boards, and fencing, gates, boundary treatment and other means of enclosure.

1.3.7. As submitted the application for the Proposed Development comprised Work No. 1 (inclusive of Works Nos 1a and 1b) for which development consent is required, as a Nationally Significant Infrastructure Project (NSIP), and Associated Development under Works Nos 2 to 9.

1.3.8. The details of the proposal for each Work No. are set out in Table A1 of Appendix A to this Report and are detailed in Schedule 1 of my recommended Development Consent Order (rDCO) at Appendix C to this Report.

1.3.9. The Applicant has produced a document titled Outline Design Principles (ODP) which has been updated and amended during the Examination. The final version of the ODP can be found at [REP6-009]. This document controls the parameters for the layout and assessment of the Proposed Development and sets the extent of the Rochdale envelope. It identifies the maximum dimensions and parameters of various components of the Proposed Development and includes a parameters plan which maps areas that include exclusion zones, buffer zones, and the location of specified elements of the Proposed Development including the Battery Energy Storage System (BESS) and the substation. These are then used in the context of the ES assessments of the impacts and effects of the Proposed Development. The Applicant has also produced an Indicative Site Layout Plan, figure 2.4 of the ES [APP-033] which illustrates one way in which the site could be laid out in accordance with the ODPs.

Associated Development

1.3.10. Issue Specific Hearing 1 (ISH1) considered the scope of the Proposed Development including the generating capacity of the generating station, whether the BESS is associated development, the operational life of the Proposed Development and decommissioning, at item 4 on the agenda [EV-003]. The description of the proposed works are set out in Table A1 of Annex A to this Report and the associated development to be considered alongside the generating station are detailed at Works 2-9 and the further associated development.

1.3.11. Guidance on what constitutes associated development is found in 'Planning Act 2008: Guidance on associated development applications for major infrastructure projects' a Department for Communities and Local Government publication in April 2013 (the Guidance). This sets out associated development principles at paragraph 5.

1.3.12. In the context of the Proposed Development items including the on-site substation (Work No. 3), the grid connection high voltage cables (Work No. 4), various elements for the interconnection of the panels, the substation and the BESS etc, various works compounds, office and warehouse and plant storage buildings, highway works and areas of habitat management are evidently necessary associated development and are in many cases seen in the examples set out in the Annexes to the Guidance. The inclusion of these as associated development was not questioned by Interested Parties (IPs) and I am satisfied that they reasonably fall within the core principles established in the Guidance.

1.3.13. At ISH1 7,000 Acres questioned whether the BESS was legitimately associated development [REP-061] and were concerned at its uncapped sizing and purpose. They were concerned that given the intermittent nature of energy from the solar panels and particularly at night that the purpose of the BESS was to provide additional revenue through the importation and export of energy to the national grid. They pointed to core principle 5(iii) from the guidance which states:

"Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development. This does not mean that the applicant cannot cross-subsidise, but if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development."

1.3.14. The Applicant's Explanatory Memorandum [REP6-027] considers the associated development at paragraphs 4.1.6 – 4.1.8 and the Applicant's written summary of its oral submissions at ISH1 [REP-036] set out the Applicant's position.

1.3.15. From the information before me I am satisfied that the co-location of a BESS with a solar generating station is a reasonable and appropriate function. As noted at paragraph 2.10.10 of the 2024 National Policy Statement EN-3 in respect of the British Energy Security Strategy "*It sets*

out that the Government is supportive of solar that is co-located with other functions (for example agriculture, onshore wind generation, or storage) to maximise the efficiency of land use." And at 2.10.16 where it is stated "*Associated infrastructure may also be proposed and may be treated, on a case by case basis, as associated development, such as energy storage…"*

1.3.16. Whilst the Applicant notes that the overall capacity of the generating station and the BESS are not proposed to be capped in terms of electrical output the ODPs place a physical envelope within which the development must be contained. The BESS in terms of its physical size and footprint, its location within the extent of the Solar and Energy Storage Park and its nature is consistent with and proportionate to the scale of the generating station. The BESS is directly related to the proposed generating station to store and export electricity generated by the generating station, and would thereby support the operation of the principal development. It is not an aim in itself in that it would not be sited and developed at this location were it not for its association with the generating station.

1.3.17. As to whether the BESS would generate additional revenue for the Applicant, there is no detailed financial break down before me, but it is not unreasonable to conclude that providing grid balancing services and accepting the importation and exportation of electricity from the BESS would have a commercial benefit. However, the Guidance advises that development should not be treated as associated development if it is only necessary as a source of additional revenue. Moreover, it goes on to advise that this does not mean that the applicant cannot cross subsidise. Given that there is a reasonable and legitimate benefit associated with the provision of storage, co-location is supported by government, and it is not the case that the BESS is only being proposed as a source of additional revenue I am satisfied that the BESS is appropriately included as associated development.

Relevant Planning History

1.3.18. The Applicant has carried out a planning history search within 10 km radius of the Order limits. This has resulted in the production of a long list of schemes which were consulted upon with the Host Authorities (Those Authorities within which the Proposed Development is located Nottinghamshire County Council, Bassetlaw District Council, Lincolnshire County Council and West Lindsey District Council), and refined into a short list [APP-181] for consideration in terms of the potential for cumulative effects for each of the topic areas in the ES, and which are considered in Chapter 16 of the ES [APP-025].

1.3.19. The Applicant notes that as the site is largely agricultural the relevant planning history within the Order limits, especially within the Solar and Energy Storage Park is limited. However, the Applicant advises it has considered relevant determined and submitted applications alongside developments and planning applications within the 10 km search area that could be of relevance to the Proposed Development.

1.3.20. Following questions raised in ExQ2 [PD-009] the Host Authorities at Deadline 2 identified further schemes that they considered should be reviewed in the context of potential cumulative effects [REP2-057] (WLDC) and [REP2-047] (BDC). The Applicant produced an Additional Cumulative Schemes Technical Note [REP4-049] at Deadline 4 to address the additional schemes suggested by the Host Authorities.

1.3.21. The list of schemes considered includes other Nationally Significant Infrastructure Solar Projects in the locality, including Cottam, West Burton and Tillbridge. The Applicant, at the ExA's request has also produced a Joint Report on the Interrelationships between Nationally Significant Infrastructure Projects which was updated during the course of the Examination with the latest position at that time. The latest version can be found at [REP6-041 and REP6-043]

1.4. ENVIRONMENTAL IMPACT ASSESSMENT

1.4.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required.

1.4.2. The Applicant's Scoping Report, submitted on 16 November 2021, can be found here [APP-109]. On 20 December 2021 the Planning Inspectorate on behalf of the Secretary of State provided a Scoping Opinion [APP-110]. On 13 April 2023 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations 2017 had been complied with [OD-004 and OD-002].

1.4.3. Table A2 of Appendix A to this Report sets out the documents which comprise the ES. Consideration is given to the adequacy of the ES and matters arising from it in respect of each of the planning issues in Chapter 3 of this Report.

1.5. HABITATS REGULATIONS ASSESSMENT

1.5.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) pre-screening Report [APP-223] has been provided. Its purpose is a pre-screening exercise to determine whether the Proposed Development would be subject to HRA and considers whether the Proposed Development is directly connected with or necessary for the conservation management of a European Site; or risks having a significant effect on a European Site on its own or in-combination with other proposals. It concludes that there are no European Sites to be taken forward to Stage 1 – Screening for Likely Significant Effects.

1.5.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Section 4 of this Report.

1.6. THE EXAMINATION

The Persons Involved

1.6.1. The persons involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP; and
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/ or temporary possession (TP) proposal made as part of the Application and objected to it at any stage in the Examination.

Relevant Representations

1.6.2. Two hundred and ninety-one relevant representations (RRs) were received by the Planning Inspectorate in the initial relevant Representation period. All persons who made RRs received a letter under Rule 6 [PD-005] of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) explaining the opportunity to become involved in the Examination as IPs.

1.6.3. Following the acceptance of the Applicant's Change Request, detailed at paragraph 1.7.3, a further period for RRs in respect of the proposed provisions was opened and a further 41 RRs were received.

1.6.4. All RRs have been fully considered by the ExA. The issues that they raise are considered in the relevant sections of this Report.

Start of the Examination

1.6.5. The Preliminary Meeting (PM) took place on 4 July 2023 and recordings of the event can be found at [EV-002 and EV-002b]. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 12 July 2023.

1.6.6. The Examination began on 4 July 2023 and concluded on 4 January 2024. The principal components of and events around the Examination can be seen in the Examination Timetable and are summarised below. No party requested to join or leave the Examination.

Procedural Decisions

1.6.7. The procedural decisions taken by the ExA are recorded in the Examination Library referenced [PD-]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs.

1.6.8. They included the Rule 6 letter informing IPs of the Preliminary Meeting and the Rule 8 letter confirming the Examination timetable as referenced above. They also included the ExA's various Written Questions, the Publication of the Report on Implications for European Sites (RIES), and

notification of and Response to the Applicant's Change Request. The details of these are further discussed below.

Statements of Common Ground (SOCGs)

1.6.9. By the end of the Examination, the following bodies had concluded and signed SoCGs with the Applicant:

- West Lindsey District Council [REP6-012];
- Nottinghamshire County Council and Bassetlaw District Council [REP6-014];
- Lincolnshire County Council [REP6-022];
- Environment Agency [REP6-018];
- Natural England [REP6-016];
- Historic England [REP-011];
- Upper Witham Internal Drainage Board [REP2-022];
- Canal and Rivers Trust [REP4-016];
- Anglian Water [REP4-017];
- Tillbridge Solar Project (TSP), West Burton Solar Project (WBSP) and Cottam Solar Project (CSP) [REP5-015].

1.6.10. The SoCGs with the following bodies remained unsigned at the end of the Examination:

- Trent Valley Internal Drainage Board [REP6-020].

1.6.11. The signed and dated SoCGs have been taken fully into account by the ExA in all relevant sections of this Report. The weight afforded to unsigned SoCGs is considered in the relevant sections of this Report.

Written Representations and Other Examination Documents

1.6.12. The Applicant and IPs were provided with opportunities to:

- Make written representations (WRs);
- Comment on WRs made by the Applicant and other IPs;
- Summarise their oral submissions at hearings in writing;
- Make other written submissions requested or accepted by the ExA; and
- Comment on documents issued for consultation by the ExA including:
    - A Report on Implications for European Sites (RIES) [OD-005] published on 25 October 2023.

1.6.13. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Sections of this Report.

Local Impact Reports

1.6.14. Local Impact Reports (LIRs) were received by the ExA from the four relevant host local authorities; Bassetlaw District Council [REP-038]; Lincolnshire County Council [REP-043]; Nottinghamshire County Council [REP-045] and West Lindsey District Council [REP-053]. Section 3 of this Report discusses the LIRs in further detail where the issues raised are

considered in relation to relevant planning issues. Table A6 in Appendix A to this Report sets out the individual local policies that are relevant to the Proposed Development. Individual policies are referred to as required in sections 3 and 4 of this Report.

Written Questions

1.6.15. I asked three rounds of written questions:

- The First set of Written Questions (ExQ1) [PD-006], dated 12 July 2023;
- Further Written Questions (ExQ2) [PD-009] dated 12 September 2023; and
- Further Written Questions (ExQ3) [PD-013] dated 25 October 2023.

1.6.16. The First set of WQs was published on 12 July 2023, alongside the Rule 8 letter as is normal practice. I considered this appropriate to ensure matters arising out of the initial assessment of the environmental information and the RRs were addressed early in the Examination.

1.6.17. In response to the Applicant's Change Request (see Section 1.7 below) I included questions in ExQ3 [PD-013] in relation to information submitted to support the Change Request.

1.6.18. All responses to my written questions have been fully considered and taken into account in all relevant sections of this Report.

Unaccompanied Site Inspections

1.6.19. I held the following Unaccompanied Site Inspections (USIs):

- USI1, 3 and 4 May 2023 to visit publicly accessible locations in the vicinity of the Solar and Energy Storage Park and along the route of the Grid Connection Corridor to gain an understanding of the Order lands and the site surroundings [EV-001];
- USI2, 18 and 19 December 2023 to see from publicly accessible locations the additional land included in the Change Request, review the location and relationship with Cottam, West Burton and Tillbridge NSIP schemes and see winter views of the Proposed Development site and surroundings [EV-001b].

1.6.20. A site note providing a procedural record of each USI can be found in the Examination Library under the above references.

Accompanied Site Inspection

1.6.21. I held an Accompanied Site Inspection (ASI) on 25 August 2023 to visit areas not publicly accessible accompanied by the Applicant and other IPs. An itinerary for the visit is available in the Examination Library [EV-001a].

1.6.22. I have had regard to the information and impressions obtained during my site inspections in all relevant Sections of this Report.

Hearings

1.6.23. Issue Specific Hearings (ISH)s were held on:

- ISH1, 5 July 2023 on the draft DCO, recordings are available at [EV-003a and EV-003c] ;
- ISH2, 23 August 2023 on the draft DCO, recordings are available at [EV-007a and EV-007c]; and
- ISH3, 23 and 24 August 2023 dealt with Environmental matters. This was split into 3 sessions with session 1 [EV-008b and EV-008d] dealing with Landscape and Land Use, session 2 [EV-008f and EV008h] dealing with Carbon Savings, and session 3 [EV-008j and EV-008l] dealing with other Environmental Matters, including construction, flooding, ecology, electromagnetic fields and noise.

1.6.24. A Compulsory Acquisition Hearing (CAH) was held under s92 of PA2008 on:

- CAH1, 22 August 2023 [EV-005b and EV-005d];

1.6.25. All APs affected by CA and/ or TP proposals were provided with an opportunity to be heard. I also used these hearings to examine the Applicant's overall case for CA and/ or TP in the round.

1.6.26. Two Open Floor Hearings (OFH) were held under s93 of PA2008:

- At the Double Tree Hilton in Lincoln on the afternoon of Tuesday 4 July 2023 [EV-004a]; and
- At Riseholme College Showground Campus on the evening of 22 August 2023 [EV-006a]

1.6.27. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise.

1.6.28. All hearings were conducted on a blended basis to enable on-line access as well as in-person participation.

1.7. CHANGES TO THE APPLICATION

1.7.1. Changes to the key application documents, including the wording of the draft DCO, were submitted and updated during the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

1.7.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the final version of the Guide to the Application submitted at D6 [REP6-002]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

Change Request

1.7.3. The Applicant submitted a formal change request on 3 October 2023, included with the Deadline 4 submissions. Table A3 in Appendix A of this Report sets out the documents comprising the Change Request.

1.7.4. The Change Request and Consultation Report [CR1-042] details the proposed changes. Four changes were proposed, Proposed Change 1 (extension of Order limits to the south of Torksey Ferry Road), 2 (Extension to the east and west along Torksey Ferry Road and land to the north of Torksey Ferry Road), 3 (Reduction in land) and 4 (Reduction in land), for which the Applicant carried out a non-statutory consultation exercise. These are set out in Table A4 in Appendix A of this Report.

1.7.5. I agreed with the Applicant's conclusions that none of the proposed changes are so material that it would constitute a materially different project. The proposed changes are not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for in January 2023.

1.7.6. I issued a PD [PD-012] to accept the changes into the Examination, noting that changes 1 and 2 would engage the requirements of Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 as additional land and/or rights are sought and that no agreement has been obtained from the landowners (Regulation 4). The changes were therefore concluded to be material changes and require the fulfilment of duties under Regulations 7, 8 and 9 of the CA Regulations amongst other matters.

1.7.7. The Applicant subsequently provided notices under Regulation 9 [OD-006 and OD-007] to demonstrate that it fulfilled those duties.

1.7.8. I scheduled concurrent Compulsory Acquisition (CAH2), Open Floor (OFH3) and Issue Specific Hearings (OFH4) for 14 December 2023. The agendas for these hearings are attached to my letter confirming the date, time and location of the virtual events [EV-009]. I opened the event at the notified time, but no parties attended, other than the Applicant, and I waited a short period and then closed the event. A recording of the event is available at [EV-010]

1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.8.1. No agreements or undertakings under s106 of the Town and Country Planning Act 1990 were put before the Examination.

1.8.2. The Applicant has confirmed that they have entered into Option for Lease agreements for the Solar and Energy Storage Park site. These Option agreements make provision for the exercise of CA powers and provide that if the Applicant acquires a freehold interest in the land using CA (Eg following a landowner default), the Applicant must nevertheless transfer the land back to the relevant landowner (or its successor in title) on decommissioning [REP3-024]. The agreements have not been provided but some general indications of the matters covered were provided in

response to questions during the CA hearing. These are referred to, where relevant, in subsequent sections of this Report.

1.8.3. Some parties have confirmed that, during the Examination, they have reached, or are reaching agreement on private agreements with the Applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent Sections of this Report.

1.9. OTHER CONSENTS

1.9.1. In addition to the consents required under PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. As set out by the Applicant in the Consents and Agreements Position Statement this was reviewed and updated where necessary during the Examination; the final version was submitted at deadline 1 (D1) [REP-022].

1.9.2. I have considered the available relevant information and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the Secretary of State make the Order.

1.10. STRUCTURE OF THIS REPORT

1.10.1. The structure of the remainder of this Report is as follows:

- **Chapter 2** records the policy background in determining the Proposed Development.
- **Chapter 3** identifies the key planning issues and sets out the findings and conclusions in relation to those key planning issues that arose from the Application and during the Examination.
- **Chapter 4** sets out my findings on HRA issues.
- **Chapter 5** sets out the balance of planning considerations arising from Sections 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- **Chapter 6** sets out my examination of land rights and related matters.
- **Chapter 7** considers the implications of the matters arising from the preceding Sections for the DCO.
- **Chapter 8** summarises all relevant considerations and sets out my recommendation to the SoS.

1.10.2. This Report is supported by the following Appendices:

- **Appendix A** – Reference Tables.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This Chapter sets out the key and most relevant legal and policy context for the application. A full list of legislation considered relevant to this application can be found in Table A5 to Appendix A to this Report. In this Chapter, I outline the legislation and policies I have considered and applied in carrying out the Examination and in making my findings and recommendations to the Secretary of State. Each chapter in the ES contains a section setting out the overarching environmental legislation, policy and guidance for each topic.

2.1.2. The LIRs [REP-038, REP-043, REP-045, and REP-053] amongst other things set out the Local Authorities' position on applicable development plan policies and other local strategies.

2.2. KEY LEGISLATION

Planning Act 2008

2.2.1. The application is for a DCO in respect of development that falls within the definition of energy generating stations set out in s15(2) of the PA2008. The Proposed Development would primarily involve the provision of solar arrays for generating electricity. However, it would also include a BESS as well as an import/ export connection to the National Grid via a high voltage grid connection cable to the substation at Cottam Power Station.

2.2.2. The PA2008 provides for two different decision-making procedures for NSIP applications; (i) where a relevant National Policy Statement (NPS) has been designated and has effect (s104); and (ii) where there is no designated NPS or there is a designated NPS, but it does not have effect (s105).

2.2.3. Solar generation was excluded from the scope of the Overarching 2011 National Policy Statement for Energy (EN-1) and the coverage of the 2011 National Policy Statement for Renewable Energy Infrastructure (EN-3) (NPS EN-3). Following the close of the Examination (4 January 2024) the suite of draft energy NPS were designated (17 January 2024), I refer to these as the 2024 NPS, these do include solar within their scope and coverage. However, they include transitional arrangements which explain that for applications submitted before the designation of the latest NPS they would not have effect and the 2011 NPS would remain in effect. Accordingly, at the time of writing, there is no designated NPS that has effect with respect to the consideration of the proposed solar arrays. Likewise, energy storage systems do not come within the scope/ coverage of the suite of designated energy NPSs that have effect.

2.2.4. However, s105 of the PA2008 enables policy included in an NPS that is not designated or has effect to be considered amongst the matters that

are considered to be important and relevant for the purposes of decision making.

2.2.5. To facilitate the export of the generated electricity to the grid the Proposed Development includes an onsite substation and works to lay high voltage cables amongst other matters as associated development for the purposes of section 115 of the PA2008. The provision of a substation and high voltage cables as associated development is something that does come within the scope of 2011 NPS EN-1 and the coverage of the 2011 National Policy Statement for Electricity Networks Infrastructure (NPS EN-5).

2.2.6. Given the position on 2011 NPS EN-1, NPS EN-3 and NPS EN-5 and the 2024 suite of NPS briefly explained above in relation to the main Proposed Development, the Examination for this application has been conducted under s105 of the PA2008.

2.2.7. In deciding this application s105(2) of the PA2008 requires the Secretary of State for Energy Security and Net Zero (SoSESNZ) to have regard to:

- any local impact report (within the meaning given by section 60(3)) submitted to the SoS before the deadline specified in a notice under section 60(2);
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

2.2.8. This Report sets out my findings, conclusions and recommendations taking these matters into account and applying s105 of the PA2008.

Equality Act 2010

2.2.9. S149 of the Equality Act 2010 (EA2010) establishes a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. I had particular regard to the PSED in terms of holding in person, blended and virtual meetings, producing guidance and holding those meetings, and in my conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics.

Human Rights Act 1998

2.2.10. The assessment of the planning merits of the Proposed Development and the CA of land can engage various relevant Articles under the Human Rights Act 1998. I have had regard to them in Chapter 3 of this Report and refer to the Act where necessary. Implications in respect to CA are considered in Chapter 7 of this Report.

2.3. NATIONAL POLICY STATEMENTS

Background

2.3.1. NPSs set out Government policy on different types of national infrastructure development. They were produced by the Department for Energy and Climate Change (DECC), which is now the Department for Energy Security and Net Zero and are intended to provide the primary policy for the examination and determination of energy NSIP applications. NPS EN-1 sets out the overarching policy and has effect for decision making, in combination with five technology specific NPSs for energy.

2.3.2. Subsequent to the closing of the Examination, the suite of draft Energy NPS's that had been subject to consultation were brought into force they are therefore now designated NPS. However, the transitional arrangements indicate that for the purposes of applications submitted before their designation they would not take effect and the 2011 NPS remained in effect and the draft NPS could be important and relevant matters. This application was submitted, and the application documentation was, based on the 2011 NPS and the draft NPS then in circulation. During the Examination I did issue a Rule 17 request for further information in which I sought IPs' views on the November 2023 draft NPSs [PD-016]. These have subsequently been brought into force with no substantial changes.

2.3.3. On the basis of the above I have had regard to the 2011 NPS as important and relevant matters as well as the 2024 NPS which I have also identified as important and relevant matters. I set out in my consideration of the issues the position of the 2011 NPS and the 2024 NPS and I recognise that the application is considered under section 105 of the PA2008 and therefore these are important and relevant matters. Where I set out the Applicant's case, I report their position which referenced the NPS as draft, as at that stage they had not yet come into force and been designated.

2.3.4. For the sake of clarity I refer to them as the 2011 NPS and the 2024 NPS to distinguish them.

2011 NPS EN-1 – Overarching National Policy Statement for Energy

2.3.5. 2011 NPS EN-1 sets out the Government's commitment to increasing renewable generation capacity but recognises that, in the short to medium term, much of the new capacity is likely to come from onshore and offshore wind.

2.3.6. In light of this, it notes that the generation of electricity from renewable sources other than wind, biomass or waste is not within the scope of 2011 NPS EN-1. As such, the Proposed Development, as a solar generating station, is excluded from the scope/ coverage of 2011 NPS EN-1.

2.3.7. Nevertheless, the Proposed Development is a generating station with a capacity of more than 50 Megawatts (MW) and the policies in 2011 NPS EN-1 are devised specifically for generating stations and energy infrastructure of this scale. As a result, the policies set out in 2011 NPS EN-1 have some bearing on the determination of this application.

2.3.8. Furthermore, 2011 NPS EN-1 acknowledges that some renewable sources are intermittent (including Solar) and cannot be adjusted to meet demand. In recognition of this, it notes that:

"there are a number of other technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage" and that "these technologies will play important roles in a low carbon electricity system". (Paragraph 3.3.12)

2.3.9. It also recognises that:

"… electrical energy storage allows energy production to be decoupled from its supply, and provides a contribution to meeting peak demand …" (Paragraph 3.3.31)

2.3.10. Accordingly, I consider 2011 NPS EN-1 is an important and relevant matter in the determination of the application.

2011 NPS EN-3 - National Policy Statement for Renewable Energy Infrastructure

2.3.11. 2011 NPS EN-3 sets out additional policies for renewable energy infrastructure that should be read in addition to the overarching policies set out in 2011 NPS EN-1. However, paragraph 1.8.1 explains that 2011 NPS EN-3 only covers energy from: biomass; offshore wind; and onshore wind. Paragraph 1.8.2 of NPS EN-3 goes onto state:

"This NPS does not cover other types of renewable energy generation that are not at present technically viable over 50MW onshore …".

2.3.12. The Applicant notes in its Planning Design and Access Statement, Paragraph 6.3.4 [REP6-006] that:

"At the time of writing (January 2023), Section 105 applies as solar projects are not specifically considered by an existing NPS. Existing NPSs do not consider solar developments because when the Energy NPSs were designated in 2011 solar developments were not generally considered at a scale of over 50 MW. This has changed rapidly over time, with solar now being commercially viable at a large scale."

2.3.13. The Planning, Design and Access Statement, Paragraph 6.4.1 [REP6-006] states that:

"The following NPSs are adopted, and considered to be matters that will be important and relevant to the Secretary of State's decision on whether to grant a DCO, although the weight applied to them is likely to be reduced following the designation of the forthcoming NPSs:

- *NPS EN-1: Overarching National Policy Statement for Energy;*

- *NPS EN-3: National Policy Statement for Renewable Energy Infrastructure; and*
- *NPS EN-5: National Policy Statement for Electricity Networks Infrastructure"*

2.3.14. As a result, the Applicant considered that 2011 NPS EN-3 is important and relevant to the determination of the application, and, along with 2011 NPS EN-1 and NPS EN-5, should form the primary decision-making framework for DCO applications for Energy NSIPs.

2.3.15. Nevertheless, while I note that solar technology has advanced considerably since the formulation of NPS EN-3 and is now viable at significantly larger scales, the fact remains that solar energy generation is a renewable generating technology that is expressly excluded from 2011 NPS EN-3's coverage.

2.3.16. Accordingly, I consider the policies contained in 2011 NPS EN-3 neither have effect nor should they be considered as being important or relevant for the determination of this application. This accords with the approach taken in previous large scale solar generating NSIPs such as Longfield Solar Farm, Cleve Hill Solar Park and Little Crow Solar Park.

2011 NPS EN5 - National Policy Statement for Electricity Networks

2.3.17. 2011 NPS EN-5 covers the long-distance transmission system (400kV and 275kV lines) and the lower voltage distribution system (132kV to 230v lines from transmission substations to the end-user); and associated infrastructure, for example substations and converter stations that facilitate the conversion between direct and alternating current.

2.3.18. The application includes a new substation on site, Work No.3, and grid connection cables, work No.4, amongst other elements of associated development. These would enable and facilitate the connection of the Solar Arrays and BESS (also identified as associated development, Work No. 2) to the national grid at the substation at Cottam Power Station.

2.3.19. These elements of the Proposed Development, as associated development forming part of the Proposed Development, would come within the scope of 2011 NPS EN-5.

2024 National Policy Statements for Energy

2.3.20. On 6 September 2021 the Government consulted on revised versions of the energy NPSs. That consultation involved the issuing of draft versions for revisions to 2011 NPS EN-1 to NPS EN-5 inclusive. On 30 March 2023, the Government published its response to the consultation comments on the dNPS which included revised draft NPSs 1 to 5 and commenced a further, more targeted re-consultation that was due to close on 25 May 2023 but was subsequently extended and closed on the 23 June 2023. On the 22 November 2023 the Government published the revised draft NPSs 1 to 5 which it then brought into force on 17 January 2024.

2.3.21. On the publication of the dNPSs the Government commented that it had made a significant number of amendments to the text of the Energy NPSs based on the feedback to the consultation. It was noted that responses focused in particular on the definition and scope of the critical national priority (CNP) criteria, and environmental and community impacts.

2.3.22. As a result, the Government noted that the CNP criterion, a key revision to these new National Policy Statements, had been strengthened and now encompasses all low carbon infrastructure.

2.3.23. In relation to Solar PV the Government's response to the consultation was to note it had broadened the scope of CNP Infrastructure to include all low carbon energy infrastructure including solar and that it had updated the text through the NPSs to reflect this. It was further confirmed that the solar section had also been updated to reflect Government's position on planning policy for ground mount solar as set out in the April 2023 Powering Up Britian: Energy Security Plan. This recognises the strong need case for increased deployment of low-cost large-scale ground mount solar.

2.3.24. It further noted that the Energy Security Plan is also clear that we will need to see increased deployment of all types and scales of solar, including rooftop projects, to meet our objectives. Alongside large ground mount projects the Government is supporting the installation of solar PV panels on the roofs of domestic, commercial, and public sector buildings through a range of measures, including the Smart Export Guarantee, fiscal incentives, and grant schemes for certain energy efficiency measures. A joint Government/ industry solar taskforce has been set up to drive the significant increases in solar needed to meet the Government's 70GW ambition and is supported by a separate sub-group focussing on rooftop solar.

2.3.25. On agricultural land classification and land type the consultation response noted that the Government recognises that as with any new development, solar projects may impact on the environment and agricultural land and that the planning system allows all views to be taken into account when decision makers balance local impacts with national need.

2.3.26. The Consultation response drew out that in the Energy Security Plan the Government sought large scale ground-mount solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land. Solar and farming can be complementary, supporting each other financially, environmentally and through shared use of land. It goes on to state the Government considers that meeting energy security and climate change goals is urgent and of critical importance to the country, and that these goals can be achieved together with maintaining food security for the UK. The government encourage deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental improvement.

2.3.27. The consultation concluded on agricultural land that the Government consider the provisions in the guidance as drafted strikes the right balance between protecting our most versatile and high-quality agricultural land and enabling the sustained increases in the development of large-scale solar capacity needed to meet our net zero targets and energy security goals. The Government also note the points made about some brownfield sites being unsuitable for solar development and note they have updated the text to clarify this.

2.3.28. The draft NPSs have now come in to force (this being after the close of the Examination) with no substantive changes and are designated and have effect for decision making under s104 of the PA2008. However, transitional arrangements are set out at paragraphs 1.6.1 to 1.6.3 of 2024 NPS EN1 which state that:

- *1.6.1 The suite of energy NPSs was first designated in 2011. In the 2020 Energy White Paper a review of the NPSs, pursuant to section 6 of the Planning Act 2008, was announced. That review resulted in a number of amendments to the NPSs.*

- *1.6.2 The Secretary of State has decided that for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS.*

- *1.6.3 The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, 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. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application.*

2.3.29. The 2024 NPSs provide the Government's approach to ensuring that we continue to have a planning policy framework which can support the infrastructure required for the transition to net zero. As such, I consider they are an important and relevant consideration in the determination of this application under s105 of the PA2008 and should be afforded considerable weight. Given their scope and coverage, the 2024 NPSs relevant to the consideration of this application are 2024 NPS EN-1 (Overarching Policy), 2024 NPS EN-3 (Renewable Energy Infrastructure) and 2024 NPS EN-5 (Electricity Network Infrastructure).

2.3.30. 2024 NPSs EN-1 and 2024 NPS EN-3 bring solar energy generation within the scope/ coverage of the reviewed suite of energy NPSs. Indeed, it makes clear that the Government considers that there is CNP for the provision of nationally significant low carbon infrastructure, which for the purposes of the CNP policy includes:

for electricity generation, all onshore and offshore generation that does not involve fossil fuel combustion (that is, renewable generation, including anaerobic digestion and other plants that convert residual waste into energy, including combustion, provided they meet existing definitions of low carbon; and nuclear generation), as well as natural gas fired generation which is carbon capture ready (this would include solar PV).

2.3.31. The 2024 NPS EN-1 also recognises the role of electricity storage and notes at paragraph 3.3.27 that:

Storage can provide various services, locally and at the national level. These include maximising the usable output from intermittent low carbon generation (e.g. solar and wind), reducing the total amount of generation capacity needed on the system; providing a range of balancing services to the NETSO and Distribution Network Operators (DNOs) to help operate the system; and reducing constraints on the networks, helping to defer or avoid the need for costly network upgrades as demand increases.

2.3.32. Likewise, 2024 NPS EN-3 explicitly covers solar PV generation above 50MW and includes a new section on solar PV generation, setting out detailed policy considerations for this type of generating technology.

2.3.33. Similar provisions to those contained in 2011 NPS EN-5 (in so far as they are important and relevant in the consideration of this application) are maintained and carried forward into 2024 NPS EN-5.

2.3.34. For each of the planning issues assessed in Section 3 of this Report, I have given consideration to whether there would or would not be compliance with the parts of the policy in 2024 NPS EN-1, 2024 NPS EN-3 and 2024 NPS EN-5 that I consider are important and relevant to the issue in question.

2.3.35. My consideration of the Proposed Development's compliance with the 2024 NPS is considered against the designated versions brought into force on 17 January 2024.

Conclusion on the designated NPSs

2.3.36. In view of the fact that there is no designated NPS that have effect in place for this type of generation, the application falls to be decided under s105 of the PA2008. The criteria to which the SoS must have regard in deciding this application includes 'any other matters to which the SoS thinks are both important and relevant to the SoS's decision' (s105(2)(c) PA2008).

2.3.37. In this specific case, I consider that 2011 NPS EN-1 is 'important and relevant' to the decision on this application because:

- the Proposed Development is a generating station with a capacity of more than 50MW and the policies in NPS EN-1 are devised specifically for generating stations and energy infrastructure of this scale; and

- NPS EN-1 contains paragraphs that emphasise the national need for electricity and electricity infrastructure, including electricity storage.

2.3.38. I also consider 2011 NPS EN-5 to be 'important and relevant' due to the inclusion of the proposed on-site substation and high voltage cable connections.

2.3.39. However, I do not consider any of the other 2011 Energy Infrastructure NPSs, including 2011 NPS EN-3, to be 'important and relevant' to the determination of this application. As noted above, solar generation is excluded from the scope/ coverage of NPS EN-3 and neither it, nor battery storage were considered in the appraisal of sustainability for that designated NPS.

2.3.40. My examination commenced before the 2024 NPSs were designated and therefore the examination was undertaken when the 2011 NPSs where designated but the 2024 NPSs were in draft. They were only designated after the close of the Examination.

2.3.41. In terms of the 2024 suite of energy NPS I consider that EN1, EN-3 and EN-5 are important and relevant matters as solar energy proposals are now clearly within their remit and are not excluded. However, the transitional arrangements mean they do not have effect. The SoS given the transitional arrangements has a discretion to consider the 2024 versions, particularly EN-3, to the extent that they consider them relevant (which they clearly are).

2.3.42. In Chapter 3, I have identified the policies in all NPSs that I consider are important and relevant to the decision to be made by the SoSESNZ. In reporting on each of the planning issues, I have reached conclusions on conformity with the policies in the NPS that are important and relevant. Given the 2024 NPS provide the latest settled Government policy I afford these considerable weight and, if any conflict arises, more than the 2011 NPS as these have now been overtaken by the latest position in the 2024 NPS.

2.4. OTHER RELEVANT NATIONAL POLICIES

2.4.1. Other relevant Government policy has been taken into account by the ExA. including the following:

The National Planning Policy Framework

2.4.2. The latest National Planning Policy Framework (NPPF) was adopted in December 2023. The NPPF, and the accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied.

2.4.3. 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 set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision making for this application. Paragraphs 7 and 8 state that the Government's approach to achieving

sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.

2.4.4. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project. They are therefore Important and Relevant matters in relation to where they raise points in respect of Solar development and its impacts.

Noise Policy Statement for England

2.4.5. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the Government's noise policy which is to:

"promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development".

2.4.6. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects using the concepts:

- No Observed Effect Level (NOEL) - the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established;
- Lowest Observable Adverse Effect Level (LOAEL) - the level above which adverse effects on health and quality of life can be detected; and
- Significant Observed Adverse Effect Level (SOAEL) - the level above which significant adverse effects on health and quality of life occur.

2.4.7. When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly be to avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

2.4.8. The potential noise impacts of the Proposed Development are considered in Section 3 of this Report.

Written Ministerial Statement 2015

2.4.9. The Written Ministerial Statement of the former Secretary of State for Communities and Local Government dated 25 March 2015 (WMS) was referenced by a number of IPs.

2.4.10. The WMS recognises the importance of solar PV as part of the UK's energy mix. However, it also acknowledges that some local communities

have genuine concerns that insufficient weight has been given to protecting Best and Most Versatile (BMV) agricultural land and the benefits of high quality agricultural land in relation to solar farms. It advises local planning authorities that, in light of these concerns, any proposal for a solar farm involving BMV agricultural land would need to be justified by the most compelling evidence.

2.4.11. In my Further Written Questions ExQ2 [PD-009] at Q2.12.3 I asked IPs for their views on the relevance of the WMS. In response, the Applicant explained [REP4-046] that " *The Applicant's view is that the Written Ministerial Statement (WMS) 25, March 2015 could be a relevant and important matter in this case but would have very limited weight."* The rationale behind this view is presented in paragraphs 7.13.10 - 7.13.11 of the Planning, Design and Access Statement (the latest version being submitted at Deadline 6 [REP6-006]). The Applicant notes that the WMS was not mentioned in the Planning Statements, ExA's Recommendation Report or Secretary of State's Decision Letters for Cleve Hill Solar Park (2020) or Little Crow Solar Park (2022). The ExA for Longfield Solar Farm (2023) did consider the WMS a relevant and important matter but did not conclude that the scheme conflicted with it. The Longfield Solar project contained 34% Best and Most Versatile Land, a significantly higher proportion than is affected by the Gate Burton Solar Park.

2.4.12. LCC commented [REP4-054] that it has not been withdrawn and is relevant as an extant statement of Government Policy, WLDC [REP4-059] contends that the Ministerial Statement is an 'important and relevant' matter in the context of section 105 and should be given significant weight in the determination of the Gate Burton Energy Park application and note that it has not been withdrawn.

2.4.13. The WMS is now of some age. However, it is still extant and must be seen within the existing policy context. That includes the 2011 NPS, 2024 NPS as well as the various updates to the NPPF.

2.4.14. While I agree that the WMS is directed towards applications under the TCPA 1990, it nevertheless sets out the Government's position on how the relevant parts of the NPPF should be applied in relation to the siting of solar farms on BMV agricultural land. There is clearly some synergy between the WMS, the NPPF, the 2011 NPS and the 2024 NPS, and the local development plan policies - all of which seek to protect BMV agricultural land in general while recognising that a balance will need to be struck.

2.4.15. While I acknowledge the WMS is not a predominant consideration in the determination of the application, it nevertheless provides further context to the Government's general approach to the siting of solar farms on BMV agricultural land.

2.4.16. As such, I consider it is an important and relevant consideration in the determination of this application. This is considered further in Section 3 below.

Other relevant policy

2.4.17. Other relevant policy considerations include:

- Net Zero: The UK's Contribution to Stopping Global Warming Emissions
- National Infrastructure Strategy
- Industrial Decarbonisation Strategy (HM Government, 2021)
- Net Zero Strategy: Build Back Greener
- British Energy Security Strategy (2022)
- Powering up Britain (DESNZ, 2023)

2.5. DEVELOPMENT PLAN POLICIES

2.5.1. The Applicant summarised the Development Plan position in its Planning, Design and Access statement which at section 6 sets out the Legislative and policy context and to which Appendix B: Local Plan Accordance Tables [REP6-006] set out the relevant local plan policies. The host authorities in their LIRs also drew attention to relevant development plan policies. Table A6 to Appendix A of this Report sets out those policies. Individual policies are referred to as required in Chapter 3 of this Report.

2.5.2. I have taken all regional and local policies and precedent development approvals into account in my considerations.

2.6. MADE DEVELOPMENT CONSENT ORDERS

2.6.1. The draft DCO includes wording derived from other made Development Consent Orders as explained in the Explanatory Memorandum, the finalt version of which was submitted at D6 [REP6-027]. Given this is the Applicant's final draft I have referred to this as the Applicant's preferred DCO (pDCO). A list of these Orders is set out in Table A7 to Appendix A of this Report.

2.7. TRANSBOUNDARY EFFECTS

2.7.1. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the SoS on 26 February 2021 following the Applicant's request for an EIA Scoping Opinion. No significant affects were identified which could impact on another European Economic Area member state in terms of extent, magnitude, probability, duration, frequency or reversibility.

2.7.2. The Regulation 32 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. I am satisfied that there are no mechanisms whereby any conceivable transboundary effects could occur.

3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This Section sets out my findings and conclusions on the planning issues. The Section is structured to firstly examine the matters of principle and nature of the development including need and alternatives, followed by generic topic headings which are arranged in alphabetical order. The order in which all these sub-section headings are presented should not be taken to imply any order of merit.

3.1.2. In each sub-section, I identify the policy background, followed by a summary of the application as made, then report on the main issues for each topic. Findings and conclusions are then drawn for each topic and weight ascribed to the conclusion on the basis of the following scale: a little weight, moderate weight or great weight for or against the making of the DCO.

Initial Assessment of Principal Issues

3.1.3. As required by section(s) 88 of PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, I made an Initial Assessment of Principal Issues (IAPI) arising from the application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted RRs. The list of issues relates to all phases of the Proposed Development. The IAPI was discussed at the PM and no other key topics were identified during the Examination. The IAPI can be found at Annex D of the Rule 6 letter [PD-005].

3.1.4. The broad headings of the key planning matters identified in the IAPI were:

- General matters, including the principle and nature of development.
- Air Quality.
- Biodiversity, Ecology and Natural Environment.
- Climate Change.
- Historic Environment.
- Human Health and Wellbeing.
- Landscape and Visual.
- Major accidents and disasters.
- Noise.
- Socio-economic and land use (including Agricultural land and BMV).
- Traffic and Transport.
- Water Environment (including Flooding).

3.1.5. The IAPI was reviewed following the acceptance of the change request [PD-012], which included a change request and consultation report setting out the changes and consultations undertaken [CR1-042], and I concluded it did not need to be updated or amended [PD-015]

3.1.6. I consider that the issues raised by Interested Parties during the Examination were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. I have nevertheless had regard to all submissions from IPs and have reported on these, if required, within each topic below.

3.1.7. The following sub-sections address each of the key planning matters that have been identified above. The IAPI also identified matters related to Compulsory Acquisition and Temporary Possession and matters to do with the drafting of the DCO as key issues to consider and these are addressed in Chapters 6 and 7 of this Report. Chapter 4 summarises and addresses any issues that arose specifically in relation to HRA.

3.2. Need, Alternatives and Generating Capacity

Introduction

3.2.1. This section examines the overall need for the Proposed Development, alternatives considered in the site selection and the anticipated generating capacity. It reflects the topics and matters raised in writing throughout the Examination and discussed at various Issue Specific Hearings including at ISH1 [EV-003a and EV-003c]and ISH2 [EV-007a and EV007c] on the dDCO and ISH3 session 2 [EV-008f] on generating capacity and electricity exported to the grid. The section considers the policies relating to these matters and concludes with a summary conclusion including the weight to be attributed to the conclusions.

Policy Considerations

National Policy Statements

2011 NPS EN-1

3.2.2. 2011 National Policy Statements NPS EN-1 sets out a case for the need and urgency for new energy infrastructure to be consented and built with the aim of supporting the Government's policies on sustainable development, notably by mitigating and adapting to climate change, and contributing to a secure, diverse and affordable energy supply.

3.2.3. Part 2 of 2011 NPS EN-1 explains that the Government is committed to meeting the legally binding target to cut carbon emissions by at least 80% (from 1990 levels) by 2050. That reduction target was subsequently revised to 100% in June 2019 by the Climate Change Act 2008 (CCA2008) (2050 Target Amendment) Order 2019.

3.2.4. The 2011 NPS recognises that delivering this change will be a major challenge for energy providers. The focus of Government activity in this transformation is to facilitate investment by the private sector in new low-carbon energy infrastructure to contribute to climate change mitigation and to ensure security of supply.

3.2.5. Notwithstanding the exclusion of solar from its coverage/ scope, it makes clear that applications for development consent for the types of infrastructure covered should be assessed on the presumption that there

is a need for those types of infrastructure. It also advises that substantial weight is to be given to the contribution which projects would make towards satisfying this need when considering applications under the PA2008. However, with solar generation's exclusion from the technologies covered by the designated 2011 NPSs, the automatic presumption in favour of granting consent "… *for infrastructure of the types covered by the energy NPSs* …" (paragraph 4.1.2 of NPS EN-1) does not apply to the decision-making in this instance.

3.2.6. Part 3 of 2011 NPS EN-1 highlights the need for all the types of energy infrastructure covered by the 2011 NPS for energy security and to reduce greenhouse gas emissions dramatically. It is for industry to propose new energy infrastructure projects within the strategic framework set by Government, and planning policy should not set targets for, or limits on, different technologies.

3.2.7. It also recognises that there are a number of technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage. It points to the likelihood that increasing reliance on renewables will mean that we need more total electricity capacity than we have now, with a larger proportion being built only or mainly to perform back-up functions.

3.2.8. Guidance is also given on the importance of a grid connection noting that while it is for an Applicant to ensure that there will be the necessary infrastructure and capacity within a transmission or distribution network to accommodate the electricity generated, the SoS will need to be satisfied that there is no obvious reason why a grid connection would not be possible.

3.2.9. In relation to alternatives 2011 NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility. Furthermore, paragraph 4.4.3 of 2011 NPS EN-1 advises that given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner.

2011 NPS EN-5

3.2.10. 2011 NPS EN-5 is a companion to 2011 NPS EN-1 and relates to electricity networks infrastructure. It covers the long-distance transmission system (400kV and 275kV lines) and the lower voltage distribution system (132kV to 230V lines from transmission substations to the end-user) and associated infrastructure.

3.2.11. The introduction explains that the new electricity generating infrastructure that the UK needs will be heavily dependent on the availability of a fit for purpose and robust electricity network. That network will need to be able to support a more complex system of supply

and demand than currently and cope with generation occurring in more diverse locations.

3.2.12. A new substation (Work No. 3) together with works to lay high voltage electrical cables to create a cable connection to the National Grid Cottam Substation and associated works (Work No. 4) also form part of the Proposed Development. This would provide the electrical connection point to the National Grid and facilitate the import and export of electricity to and from the proposed Solar and Energy Storage Park site. These elements of the Proposed Development, as associated development forming part of the Proposed Development, would come within the scope of 2011 NPS EN-5.

3.2.13. The remainder of 2011 NPS EN-5 is largely concerned with electricity network infrastructure comprising transmission systems and associated infrastructure.

2024 NPS EN-1

3.2.14. 2024 NPS EN-1 includes transitional arrangements which make clear that the NPS will have effect only in relation to those applications for development consent accepted for examination after the designation of the NPS. As it has now been designated but the application was submitted before its designation the 2024 NPS EN-1 does not have effect. However, the transitional provisions also make clear that any emerging 2024 NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application. In this case as the 2024 NPS includes matters directly related to solar schemes I consider that it is important and relevant.

3.2.15. The 2024 NPS EN1 advises that the Government believes that the 2024 NPSs set out planning policies which both respect the principles of sustainable development and can facilitate, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain safe, secure, affordable and low carbon supplies of energy.

3.2.16. In terms of need the 2024 NPS EN1 states the Secretary of State should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the Government has demonstrated that there is a need for those types of infrastructure which is urgent, as described for each of them in this Part. In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008; and that the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this 2024 NPS.

3.2.17. The 2024 NPS EN-1 does now include solar within its scope and notes that wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply. It also notes that a secure reliable affordable net zero consistent system in 2035 is likely to be composed predominantly of wind and solar.

3.2.18. It recognises the role of electricity storage advising that storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.

3.2.19. It advises that given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.

3.2.20. 2024 NPS EN-1 goes on to expand upon a new concept when it states that Government has concluded that there is a Critical National Priority (CNP) for the provision of nationally significant low carbon infrastructure. Section 4.2 of the 2024 NPS states which energy generating technologies are low carbon and are therefore CNP infrastructure, and this includes solar PV. In this context the 2024 NPS advises that subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible.

3.2.21. In section 4 of the 2024 NPS it is advised that for projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases, subject to certain qualifications.

3.2.22. Section 4 also repeats the previous advice from the 2011 NPS in terms of the consideration of alternatives noting that as in any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is, in the first instance, a matter of law. This NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective.

2024 NPS EN-3

3.2.23. 2024 NPS EN-3 deals with Renewable Energy Infrastructure and identifies the types of nationally significant renewable electricity generating stations it covers, which includes solar PV over 50MW in England. This therefore covers the Proposed Development. However, as this is a companion to 2024 EN-1 the transitional arrangements mean that it does not have effect for this application although it is an important and relevant matter given that it specifically addresses solar energy

generation, and is a statement of the Government's settled and most up to date policy position now that it is designated.

3.2.24. The 2024 NPS EN-3 sets out consideration of the impacts specific to various generating stations including solar PV. It reiterates that Section 3 of 2024 NPS EN-1 includes assessments of the need for new major renewable electricity infrastructure. In the light of this, the Secretary of State should act on the basis that the need for infrastructure covered by this 2024 NPS has been demonstrated. It further advises that as stated in Section 4.2 of 2024 NPS EN-1, to support the urgent need for new low carbon infrastructure, all onshore and offshore electricity generation covered in this NPS that does not involve fossil fuel combustion (that is, renewable generation) are considered to be Critical National Priority (CNP) Infrastructure.

3.2.25. Section 2.10 addresses Solar PV generation and starts by noting that solar has an important role in delivering the Government's goals for greater energy independence and the British Energy Security Strategy states that Government expects a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW). It sets out that Government is supportive of solar that is "*co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use*".

2024 NPS EN-5

3.2.26. 2024 NPS EN-5 deals with Electricity Networks Infrastructure it should be read in conjunction with the 2024 NPS EN-1 and 2024 NPS EN-3. It notes that as stated in Section 4.2 of 2024 NPS EN-1, to support the urgent need for new low carbon infrastructure, all power lines in scope of 2024 NPS EN-5 including network reinforcement and upgrade works, and associated infrastructure such as substations, are considered to be CNP infrastructure.

National Planning Policy Framework, December 2023

3.2.27. Chapter 14 of the NPPF indicates that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.

3.2.28. Paragraph 163 advises that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy; and should approve the application if its impacts are (or can be made) acceptable.

3.2.29. The Planning Practice Guidance on Renewable and Low Carbon Energy advises that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. It further advises on the particular planning considerations that relate to large scale ground mounted solar photovoltaic farms and in the context of this section

highlights the energy generating potential, which can vary for a number of reasons including, latitude and aspect, as a matter local planning authorities will need to consider.

Local Development Plans

Central Lincolnshire Local Plan 2023-2043, adopted April 2023 (CLLP)

3.2.30. CLLP Policy S14 supports the transition to a net zero carbon future and seeks to maximise appropriately located renewable energy generated in Central Lincolnshire (such energy likely being wind and solar based). It further advises that proposals for renewable energy schemes, including ancillary development, will be supported where the direct, indirect, individual and cumulative impacts on the various following considerations are, or will be made, acceptable. The Policy goes on to outline various tests to ensure compliance. In terms of solar based energy proposals, the policy identifies additional matters: these include, for ground based photovoltaics and associated infrastructure, including commercial large scale proposals, a presumption in favour unless various caveats arise. The caveats against development include clear and demonstrable significant harm, the proposal is on BMV and does not meet the requirements of further policy tests or the land is allocated for another purpose in the development plan.

3.2.31. CLLP Policy S16 relates to wider energy infrastructure and supports the transition to net zero carbon future and, in doing so, recognises and supports, in principle, the need for significant investment in new and upgraded energy infrastructure. It advises support will be given to proposals which are necessary for, or form part of, the transition to a net zero carbon sub-region, which could include: energy storage facilities (such as battery storage or thermal storage); and upgraded or new electricity facilities (such as transmission facilities, sub-stations or other electricity infrastructure).

Bassetlaw District Council Core Strategy 2011 (BDC CS)

3.2.32. Policy DM10 of the BDC CS states the Council will be supportive of proposals that seek to utilise renewable and low carbon energy provided that they demonstrate they are: compatible with policies to safeguard the built and natural environment; do not lead to the loss or damage of high-grade agricultural land; are compatible with tourism and recreational facilities; will not result in unacceptable landscape and visual impacts and will not result in unacceptable cumulative impacts.

Bassetlaw District Council Draft Local Plan 2020 - 2038

3.2.33. Policy ST51 of the BDC Draft Local Plan 2020-2038 makes provision for development that generates, shares, transmits and/or stores zero carbon and/or low carbon renewable energy outside of the identified Area of Best Fit provided it is demonstrated there is an operational and/or economic need for the development in that location, and the satisfactory resolution of all relevant site specific and cumulative impacts that the scheme could have on the area.

The Applicant's Case

3.2.34. The Applicant's case for the Proposed Development including the need for the Proposed Development, along with the alternatives considered during the site selection process and the level of electricity likely to be generated by the scheme is set out in various documents including:

- Statement of Need [APP-004]
- Planning Design and Access Statement – Part 1 & Part 2 [REP6-004 & REP6-006]
- Environmental Statement – Chapter 2: The Scheme [APP-011]
- Environmental Statement - Chapter 3: Alternatives and Design Evolution [APP-012]
- Environmental Statement – Chapter 6: Climate Change [APP-015]

3.2.35. Documents subsequently submitted into the Examination by the Applicant to address matters related to need, alternatives and electricity generation included:

- Applicant's response to Relevant Representations [REP-032]
- Written summary of oral representations at ISH1 [REP-036]
- Applicant's response to Examining Authority's first written questions [REP2-041]
- Applicant's written summary of oral submissions to ISH3 [REP3-027]
- Applicants response to Written Representations [REP3-033]
- Technical note on energy yield forecast methodology [REP3-031]
- Applicant's cover letter to deadline 6 submissions [REP6-001]
- Applicant's closing submissions commenting on outstanding matters [REP7-001]

3.2.36. The Applicant's need case as submitted in its Statement of Need, the original Planning Design and Access Statement and the chapters in the ES predated the evolving policy situation during the Examination and in particular the designation of the 2024 NPSs on Energy. The Applicant was given an opportunity to comment on the November draft NPSs at later deadlines and the final submitted Planning Design and Access Statement and Cover letter submitted with Deadline 6 submissions provided the Applicant's updated position on need and policy to address these updates. They are referenced with regard to the draft NPS as that is what they were at the time. However, the designated versions brought into force were not changed from the November draft NPS on which parties were given an opportunity to comment. The Statement of Need was not updated.

3.2.37. The Applicant's summary of its case on need at the close of the Examination included comment that the Committee on Climate Change (CCC) published its annual Progress Report to Parliament in June 2023 (3-2). The report noted the lack of urgency in the delivery of decarbonisation in the UK and recommended to Parliament that the UK should stay firm on its existing commitments and move to delivery.

3.2.38. The Applicant also notes that by doing so, the UK would be delivering on climate change and would also be bolstering its energy security.

Following an expectation included in the British Energy Security Strategy of a "*five-fold increase in deployment by 2035*" of solar capacity in the UK, the Powering Up Britain policy paper, March 2023, clarified that "*we are aiming for 70 gigawatts of ground and rooftop capacity together by 2035… We need to maximise deployment of both types of solar to achieve our overall target.*"

3.2.39. The Applicant further comments that the Government continues to encourage the development of other low-carbon technologies in addition to wind and solar to support its energy aims but many have long and uncertain development timescales and are unlikely to deliver at scale before 2030. The Applicant confirms the summary of progress included at section 5.4 of the Statement of Need remains relevant, although some progress has been made on these other technologies since the Statement of Need was submitted.

3.2.40. The Applicant contends that the development, in the 2020s, of large-scale ground mount solar in the UK is one measure which will reduce the UK's dependency on carbon-intensive fuels, support the delivery of the UK's international climate change commitments for 2030, move the country towards a carbon-free electricity system by 2035 and support achieving net zero in the UK by 2050, thereby ending the UK's contribution to global warming, according to sections 4.3, 4.5 and 9.9 of the Applicant's Statement of Need [APP-004].

3.2.41. The Applicant considers that the updated dNPS EN-1, EN-3 and EN-5 are important and relevant matters as is (2011) NPS EN-1 given its general applicability to energy projects, albeit solar is not included. The Applicant highlights that the forthcoming NPSs provide further substantiation of the critical role large-scale ground mount solar needs to take towards achieving the Government's aims for a zero-carbon, secure and affordable energy system. Critically, paragraph 3.1.1 of forthcoming NPS EN-1 "*Government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and … considers that the need for such infrastructure is urgent.*"

3.2.42. The Applicant points to various paragraphs in the dNPS EN-1 to support its case and in particular Paragraphs 3.3.57 to 3.3.64 of dNPS EN-1 which establish the urgent need for electricity generating capacity. Paragraph 3.3.61 states that "*The need for all these types of infrastructure is established by this NPS and a combination of many or all of them is urgently required for both energy security and Net Zero*" and paragraph 3.3.62 states the Government's conclusion that "*there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure*" including all onshore and offshore renewable generation (paragraph 4.2.5). Therefore, the Applicant considers that all large-scale, ground-mount solar projects, including the Proposed Development, constitute CNP infrastructure. This section of dNPS EN-1 concludes that "*Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible*" (see paragraph 3.3.64).

3.2.43. The Applicant argues that if the Proposed Development had not been accepted for examination prior to the designation of the latest NPSs, then forthcoming NPS EN-1 would ascribe to the Proposed Development a CNP. Moreover, that Paragraph 4.1.7 of forthcoming NPS EN-1 describes that, as a result of the increased urgent need for the Proposed Development and others like it, it would be likely that the need case for the Proposed Development would outweigh any residual effects of the Proposed Development, assuming that the ExA has not identified any which are "*exceptional*". The Applicant's view being residual effects of the Proposed Development cannot reasonably be considered "*exceptional*" given they amount to very limited landscape and visual effects.

3.2.44. In the context of alternatives, the Applicant sets out its approach in Chapter 3 of the ES which describes a four-stage approach to site selection identifying a search area based on operational criteria associated with the fixed point of connection. Exclusionary and discretionary planning and environmental criteria were applied (including landscape and green belt designations, ecological designations, heritage designations local allocations and designations, agricultural land classification proximity to dwellings and flood risk) to discount land within the area of search unsuitable to locate the solar scheme. Then a series of key operational inclusionary criteria were applied such as site size, land assembly, site topography, access requirements and availability of brownfield land. In summary, this stage identified land suitable for solar development. Finally, a desktop assessment and evaluation by environmental and planning specialists considered the identified locations.

3.2.45. The Gate Burton site met all criteria and avoided those areas likely to lead to a policy requirement to consider whether alternative sites would be preferable. The Gate Burton site is located in close proximity to the grid connection at the National Electricity Transmission System (NETS) Cottam substation and therefore well situated with regard to the grid connection. The route of the grid connection itself has been subject to optioneering as set out in Appendix 3-A: Grid Connection Corridor Appraisal of the ES [APP-115]. Opportunities to combine the GCC areas have been explored and have resulted in the identification of a shared GCC area. Parts of the corridor would be shared with Cottam, West Burton and Tillbridge solar schemes.

3.2.46. In terms of electricity generation, the Applicant has identified that the Proposed Development has no upper limit but has a minimum of 50MW which ensures it is an NSIP scheme. The indicative site layout plan [APP-033] based on a potential solar panel layout would result in an installed capacity of 531MW. Minimum yields for the Proposed Development are assumed to be 922 kilowatt hours (KWh) per year per kilowatt peak with the output from the panels assumed to degrade by 2% in the first year and 0.45% per year thereafter. The Proposed Development includes a Requirement to decommission the authorised development no later than 60 years following the date of final commissioning (Requirement 19 of the dDCO). For an installation rated at 531 Megawatt power (MWp) operating for 60 years, the Applicant estimates a lifetime generation of

26.986 terawatt hours (TWh) of electricity. The Proposed Development also includes a battery storage facility with an assumed capacity of 500 MWh.

Views of IPs

Host Authorities

3.2.47. WLDC in its LIR [REP-053], Written Representation [REP2-056 and REP2-058] and Outstanding matters [REP7-003] confirms that it recognises the Proposed Development would help meet a national need for additional electricity generating capacity and that this accords with the UK's energy policy to decarbonise electricity generation and deliver security of supply. Furthermore, it recognises there is an urgent need for energy generation of all types. However, WLDC maintains concerns with regard to the loss of prime agricultural land, the significant adverse landscape and visual effects (including on Areas of Great Landscape Value (AGLV)) and the effects on the economy and communities caused by the Proposed Development, finding these disbenefits clearly outweigh the benefits in accordance with s105 of the PA2008. It notes that because of the identified harms the Proposed Development does not comply with policies S14, S43, S54 and S62 of the CLLP. WLDC also raises concerns around the visibility of the assessment methodology for the alternatives raising issue with outliers and lack of transparency of the assessments undertaken.

3.2.48. LCC in its LIR [REP-043] and its Written Representation [REP2-051] notes that the project would produce clean renewable energy that would support the nation's transition to a low carbon future and deliver significant biodiversity net gain benefits through the creation of mitigation and enhancements as well as other more limited positive impacts (as defined in the Council's Local Impact Report). However, it considers that these positive impacts are not outweighed by the negative impacts, some of which would be significant, that would arise given the overall scale and size of the Proposed Development both on its own and cumulatively with the three other solar projects proposed in this geographical area.

3.2.49. NCC does not raise any points in relation to the need or principle of the development in its LIR. In the SoCG signed between NCC, BDC and the Applicant [REP6-014] it is agreed that NCC supports the principle of renewable energy in terms of national planning policy and the aims of the Government in achieving its renewable targets. It is further noted in the SoCG that there are no areas of disagreement between the Applicant, NCC and BDC regarding site selection and the Proposed Development's design.

3.2.50. BDC in its LIR [REP-038] notes that its Core Strategy policies are silent in respect of solar farm development. However, it is acknowledged that Government policy supports such development in appropriate locations. It further notes that there is clear policy support for carbon reduction in DM4 but that the policy seeks new development that respects character and protects amenity. In terms of Policy DM10 it notes Bassetlaw

contains the cable corridor route which would be underground. A full assessment has been undertaken by the Applicant on various cable routes and option C1 was taken as the best option for minimising impacts on the environment and local residents whilst at the same time providing technical requirements. BDC comments that the examiner is requested to ensure that the disruption to the local community in terms of noise and disruption is minimised so that it is in accordance with Policy DM4.

Other IPs

3.2.51. There were a significant number of RRs and many raised concerns with the efficiency, yield and electricity generation benefit that would arise from the Proposed Development. Concerns were expressed at the low solar radiance in England and that generally solar panels only produced around 10% of the installed capacity. Concerns were expressed that the energy benefits cited (which were considered to be particularly inefficient) did not outweigh the significant local effects in relation to a number of matters including landscape and visual effects, use of agricultural land and traffic effects.

3.2.52. 7000 Acres (a local community group) engaged extensively with the Examination and submitted various representations at all Deadlines. They also participated in the various hearings. They raised significant concerns about the Applicant's reliance on policy suggesting policy did not directly mention large scale solar farms of the scale identified in this application. They raised concerns with the energy yield, the total levels of energy generated and whether this was the benefit that it was suggested by the Applicant.

3.2.53. 7000 Acres suggested that the alternatives considered by the Applicant did not properly consider the national use of rooftop solar provision, its use on existing industrial warehouse and housing developments, its use in other locations, including car parks and motorways. It advocated that the rooftop revolution previously called for would reduce the need for large scale solar deployments of the scale identified in this and the other applications in the area.

3.2.54. 7000 Acres' submissions relevant to the matters of need, alternatives and electricity generation included:

- Relevant Representations [RR-001]
- Deadline 1 submissions [REP-061, REP-062 and REP-063]
- Deadline 2 submissions [REP2-067, REP2-079, REP2-080]
- Deadline 3 submissions [REP3-052]
- Deadline 4 submission, this included 7000 acres responses to ExQ1 which were submitted late due to the organisation missing the previous Deadline and not fully appreciating the process of the Examination. I accepted it at this stage at my discretion in the context of fairness, openness and enabling a full consideration of the issues to be considered in the examination [REP4-071]
- Deadline 5 submission [REP5-062]
- Deadline 7 submission [REP7-008]

3.2.55. Many of the individual participants in the Examination were also members of or affiliated their views with 7000 Acres. Their representations are a good range and examples of the many issues that were raised during the Examination and reflect the issues raised by other IPs.

Examination

3.2.56. The issue of need was a matter of significant issue during the Examination. This was reflected in the various RRs and general submissions focusing on the interpretation and support of Government policy as well as the contribution that this Proposed Development would make to achieving an accepted goal of decarbonising electricity generation. With this in mind I asked a number of questions at EXQ1 [PD-006] around the issue of need, policy support and electricity generation that would arise from the Proposed Development. The level of electricity to be generated being an important and relevant consideration not only in total benefits but the contribution the Proposed Development would make to the UK Government's target for net zero.

3.2.57. I sought to understand the basis of the Applicant's calculation of the electricity that would be generated in the context of concerns expressed in RRs regarding the inefficiency of solar generation. This also included consideration of the factors affecting efficiency and the extent to which solar could contribute to the UK's energy needs given its intermittent nature. The Applicant's responses and the comments of 7000 Acres are set out in the documents referred to above.

3.2.58. There were also questions directed towards understanding of the Applicant's approach to site selection and the consideration of the factors affecting that, including matters related to the use of alternative sites, use of brownfield and the deployment of solar panels in other scenarios than large scale solar farm deployments. The issue of the use of agricultural land is dealt with in further detail below in a separate Section.

3.2.59. Issue Specific Hearing 1 [EV-003a] on the draft DCO considered the nature and principle of development that was to be authorised and included consideration of the amount of electricity to be generated. Issue Specific Hearing 3 session 2 [EV-008f] whilst addressing carbon savings (which is dealt with below) also included consideration of the electricity generated by the Proposed Development.

3.2.60. The Applicant in response to matters concluded in the various SoCGs on these issues with the various Host Authorities [REP6-012, REP6-014, REP6-022], adds further detail to matters that are important and relevant in relation to the matters referred to above, including on Government Policy, Local Policy, the principle of development and alternatives amongst other matters. Also in its response to the various submissions made by IPs at various deadlines the Applicant generally identified the issues raised and its response, providing a representative summary and indication of the matters raised and responses thereto [REP-032, REP3-029, REP4-047, REP5-046, REP6-044].

Conclusions on need, alternatives and electricity generation.

Need

3.2.61. There is a recognised need by all parties in this Examination for the decarbonisation of energy generation in the move to meet the Government's objective of net zero emissions by 2050, albeit caveated by differing views on the extent to which the Proposed Development would contribute to that objective and the balance struck between the benefits and disbenefits associated with the Proposed Development.

3.2.62. Albeit that Solar PV energy generation is not within the scope and coverage of 2011 NPS EN-1, it is still an important and relevant matter and identifies an important and urgent need for new energy infrastructure. The recently designated NPS documents on Energy including 2024 NPS EN-1 and 2024 NPS EN-3 make clear that for development consent for the types of infrastructure covered by them the Government has demonstrated that there is a need for those types of infrastructure which is urgent. They now include solar within their scope and coverage. As they are now designated, they do demonstrate Government policy, however, they do not have effect in relation to this application. The transitional arrangements included do, however, indicate that they can be important and relevant matters. Given that they have now been designated and they provide an expression of the Government's latest policy they are an important and relevant matter in my consideration of this issue.

3.2.63. 2024 NPS EN-1 expands the concept of CNP, originally in a previous draft related to wind, to all low carbon infrastructure. Given the suggested definition this would include solar. With the identification of CNP, 2024 NPS EN-1 applies a policy presumption that the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. The importance of the urgent need and policy presumption is significant.

3.2.64. As previously noted, this is not in effect for this application, but it would potentially be an important and relevant matter and as it is Government policy identifies the continued firm direction of travel. The 2024 NPS does note that the application of CNP policy is to be applied following an assessment of the Development Proposals and the balance of the impacts of it taking account of the mitigation hierarchy. It does not add to the need argument as an additional matter but is to be applied at the end of the process. I therefore address this aspect in Section 5 of this Report below.

3.2.65. The British Energy Security Strategy states that the Government expects a fivefold increase in solar deployment by 2035, rising to 70GW. In Powering Up Britain: Energy Security Plan it states the Government seeks large scale ground mounted solar deployment across the UK. The Government recognises the important role solar has in delivering its goals for greater energy independence and identifies it as a key part of

its strategy for low-cost decarbonisation of the energy sector, 2024 NPS EN-3.

3.2.66. Whilst recognising the Government's policy position and support for decarbonising the energy sector and even for support for solar, 7000 Acres suggest that the policy is not so explicit as to fully support solar deployment of the size and scale of the Proposed Development. They suggest that the references in dNPS EN-3 (as it was at that time) to a typical 50MW solar farm consisting of 100,000 to 150,000 panels and covering between 125 to 200 acres give an important indication of the scale of deployment for solar farms. They argue that in any of the policy documents and statements there is no acceptance of development of the scale anticipated in this application. However, 2024 NPS EN-3 does state this will vary significantly depending on the site, with some being larger and some being smaller. There is also an expectation identified that this may change over time as technology evolves.

3.2.67. The Government's view is that large capacities of low carbon generation will be required to meet increased demand and to replace output from fossil fuel generating plants as they are decommissioned. The Government has stated that a secure, reliable, affordable, Net Zero consistent system in 2050 is likely to be composed predominantly of wind and solar.

3.2.68. Concern has also been expressed as to the effectiveness of solar given its intermittency and efficiency. I address efficiency below in the context of electricity generated. It is recognised that electrical output from solar generation can vary due to uncontrollable factors and is weather and seasonally dependant. As was stated by IPs on a number of occasions what happens when the sun does not shine. The position in terms of overall policy, however, is not reliant on solar solely. As noted, the Government has stated that the future energy system is likely to be composed predominantly of wind and solar. Solar is an essential part of a multi-technology generation mix, including wind, other low-carbon technologies and integration/ flexible technologies such as short-term and long-term energy storage.

3.2.69. The Applicant's Statement of Need demonstrates that variability can be mitigated by developing larger generation capacities, developing projects with generation profiles which are complementary to each other (as shown in Figures 8-1 and 8-2 of the Statement of Need [APP-004]) along with developing integration technologies such as battery storage. The Applicant notes that Solar PV panels do not need direct sunlight to generate electricity. Whilst cloudy conditions can reduce total output compared to that of a clear day, the Applicant considers that the Proposed Development is still expected to generate significant outputs of low carbon electricity at such times.

3.2.70. The assumed load factor (the ratio of total energy used over a specific period of time to the total possible energy available within that period) for solar in the UK is 11%. This takes into account factors including weather conditions, location and site design. In consideration of these

factors, the Proposed Development would achieve a comparative annual generation per hectare as onshore wind, as shown in Table 7-1 of the Statement of Need [APP-004]. The benefits of the Proposed Development in terms of electricity generated and emission reductions have been estimated taking into account the load factor.

3.2.71. The other side of this coin is that solar will then produce significant amounts of electricity at a time which does not meet peak demand so that its peak production in summer months would be at the lower point of demand. It is argued by IPs that this would potentially result in increased curtailment or wasted energy citing 2022 Future Energy Scenarios (FES 2022). Whilst FES does identify high levels of renewable capacity combined with low flexibility baseload generation results in material levels of curtailed energy from around 2030 it anticipates that curtailment is anticipated to peak in the 2030s (FES 2023, Figure FL.18) as flexible generation, short term and inter-seasonal storage deployment catches up with renewable deployment.

3.2.72. The Applicant also notes that the FES identifies potential remedies including a range of flexible technologies are needed, surplus supply being used to produce hydrogen, flexible solutions such as energy storage and demand side response.

3.2.73. The potential for greater curtailment in the short term could in the view of some IPs increase the cost of solar electricity such that it was not as competitive and would be indeed high cost comparatively as it would be sold during low demand when production was high at a predetermined cost. However, this does not take account of the wider market development and cost comparisons across technologies and the movement away from fossil fuels that will be required. The Applicant's Statement of Need identifies the cost comparison with other technologies which demonstrates large scale solar is already cheaper per MWh than offshore wind, and the Government's projections are that it will remain cheaper in the future. The Government position is that solar is a key part of its strategy for low-cost decarbonisation of the energy sector as identified in 2024 NPS EN-3.

3.2.74. Overall, I am satisfied that there is an urgent need for renewable energy generating capacity, that solar can make an important contribution to that need as part of a multi-technology generation mix and that a general need for the Proposed Development is made out.

Alternatives

3.2.75. The Proposed Development does not result in a type of development or in a location covered by a designation that would require the consideration of alternatives as a specific policy or legal test. 2011 NPS EN-1 or 2024 NPS EN-1 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice made, taking into

account the environmental, social and economic effects including technical and commercial feasibility.

3.2.76. The Applicant in Chapter 3 of the ES [APP-012] has sought to provide that assessment. In consideration of the robustness of that assessment paragraph 4.4.3 of 2011 NPS EN-1 advises that given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner, whether alternatives could realistically provide the same capacity and be delivered over the same timescale, and that alternatives not studied by the applicant should only be considered where 'important and relevant' to decision making. Similar advice is given in the 2024 NPS EN-1.

3.2.77. The Applicant set out the 4-stage process that it undertook to consider site location and available sites. The Applicant acknowledges that its starting point was the grid connection point at Cottam substation. 2024 NPS EN-3 advises that to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs applicants may choose a site based on nearby available grid export capacity. Given the Applicant has a Grid Connection Offer in place this is not an unreasonable starting point.

3.2.78. Stage 1 consisted of determining the search area for a site to accommodate the Proposed Development centred around the available grid connection at the NETS Cottam substation. Stage 2 consisted of a feasibility assessment within the search area to identify the presence/absence of key environmental and social constraints. At Stage 3, areas of land that were identified as potentially suitable to accommodate a proposed solar development following Stage 2 were further refined through analysis of topography, size and pattern of potential sites, access, suitable sites of brownfield land and a preference for a small number of willing landowners. At Stage 4, the Gate Burton site (the Order limits) was identified as being suitable for solar PV development as it met all criteria and avoided those areas likely to lead to a policy requirement to consider whether alternative sites would be preferable.

3.2.79. The identification of a single constrained site, of limited landownerships, with appropriate layout and landform, that did not engage significant policy constraints or nationally designated sites was identified. Within this consideration the Applicant states they had regard to agricultural land classification (which I address in more detail later in this Report) as well as brownfield land and the potential for alternative approaches.

3.2.80. The consideration of the deployment of a large-scale solar ground mounted project rather than rooftop or other locations has been a significant area for concern for IPs. As noted above the British Energy Security Strategy supports a 5-fold increase in the deployment of solar increasing from some 14 GW to 70GW by 2035. The Applicant suggests that the largest roofs are likely to be of a single MW scale and would therefore require in the region of 56,000 large single schemes to meet the 56GW required by 2035. The Applicant further points to physical,

legal and scalability issues which could constrain such provision. Section 7.6 of the Statement of Need [APP-004] demonstrates that in order to meet National Grid's projections of required solar capacity in 2050, a significant proportion of total UK land used by industrial or commercial units would be required. The use of rooftops would be complimentary and could support the overall objective but given the required increase in capacity in such a short period both rooftop and ground mounted large-scale projects would be required.

3.2.81. As well as rooftops IPs also referred to the use of land adjacent to the highway network or on car parks or other locations. Grid connection availability, orientation, ground topology and proximity to other developments may also limit the capacity of solar generation which could be installed adjacent to the highway network. Solar panels are being developed on car parking facilities and these alternative locations do not supplant the need for large scale solar schemes. Given the urgent need to meet solar generation capacity targets, such development could supplement large scale solar rather than be a substitute for it.

3.2.82. Many IPs also raised concerns related to brownfield land. The Applicant has indicated that it considered brownfield sites but there were none of sufficient size and scale to meet the requirements of the Proposed Development. A number of sites were identified by IPs that could potentially have been brownfield sites for use including Cottam Power Station, High Marnham Power Station and various RAF sites. The Applicant addressed these in its response to RRs document [REP-032]. It is noted that Cottam Power Station and the Priority Regeneration Area is in a higher flood zone than the application site, is identified within a development plan for a broad mix of uses under development plan policies, partly remains in use and a significant portion is part of a Local Wildlife Site. Land adjoining the former High Marnham Power Station in Nottinghamshire is subject to a full planning permission application for the construction and operation of a Solar Photovoltaic (PV) Farm with other associated infrastructure. This was for a scheme for 42 MW some 8MW less than the application scheme.

3.2.83. RAF Scampton is identified in the Central Lincolnshire Local Plan (CLLP) under Policy S75 as an opportunity area for mixed use development. The former RAF Hemswell site has now been developed into the Hemswell Cliff Business Park and is allocated under Policy S29 of the CLLP4 as a Strategic Employment Site. The former RAF Kirton site in North Lincolnshire houses a gliding club which currently occupies and uses the former runways, the Hurricane Business Park and recreational facilities including land for Airsoft events and Zombie experience. The RAF sites are all also smaller than the Gate Burton site so could not deliver the same amount of solar capacity, and are located further from the grid connection point.

3.2.84. WLDC raised concerns that the methodology and assessment of the inclusive and exclusionary processes were not documented and detailed and that the site selection included some outlier sites which thereby

undermined the Applicant's process by not maintaining a consistent approach to a consolidated site for the search.

3.2.85. Whilst I note the concerns raised in relation to the understanding and interrogation of the site selection process I am satisfied that the methodology and information contained in the ES is sufficient to provide for a proportionate and reasonable consideration of the available sites. The size and energy produced by the Proposed Development would not be easily located in sites which were in close proximity to a grid connection and in a consolidated location with limited landownership and meeting the physical and policy constraints and none were readily identified by the Applicant of other IPs, other than the Application site by the Applicant.

3.2.86. The Applicant has also included its assessment of the GCC [APP-115] identifying the various routes and methods to secure connection to the grid connection point. Taking account of the physical constraints and the undergrounding of the cable, crossing the River Trent and the proximity to other solar schemes and the collaboration between parties for use of or part use of the corridor I am satisfied that an appropriate assessment of the potential alternatives for the GCC has also been undertaken.

3.2.87. Overall, the Applicant's consideration of alternatives in the ES is proportionate, appropriate and reasonable and is also in line with the 2011 and 2024 NPS EN-1 advice.

Electricity generated

3.2.88. The Proposed Development seeks consent for a generating station with a minimum capacity of 50MW. However, through the ODPs and the Applicant's indicative site layout the Applicant has demonstrated that the Proposed Development would have a likely estimated generating Capacity of 531 MW. In its technical note on energy yield forecast methodology [REP3-031] the Applicant demonstrates that the Proposed Development would have a first year yield of 922 kWh/kWp. Based on that capacity and yield the Applicant has identified that the overall electricity generated by the Proposed Development over its 60-year lifetime would be 26.98 TwH. The Applicant suggests that as an annual average this would represent an average yield of 449,800 MWh per annum. The Applicant suggests that this would be equivalent to the electricity required to power 155,000 homes.

3.2.89. For the purposes of estimating the possible design and output of the site, a Trina TSM-650DE21 PV panel with an output of 650Wp was used by the Applicant in the Indicative Site Layout Plan [APP-033]. This is considered a conservative but realistic forecast of what the Applicant anticipates could be deployed within the project. It is stated there are 817,110 panels in the current assumed design. However, for clarity and in the context of the assessment of environmental effects the Applicant confirms that the number of PV Panels which would make up each PV Table is not yet known. Various factors will help to inform the number and arrangement, and it is likely some flexibility will be required to accommodate future technology developments. For this reason, the

assessment of effects is based on the parameters outlined in Table 2-1 of Chapter 2 in the ES [APP-011] which are secured in the ODP [REP6-009]. For this reason, the assessment of effects is based on the parameters outlined in Table 2-1 of Chapter 2 in the ES [APP-011 APP-111] which are secured in the ODP [REP6-009].

3.2.90. Many IPs were concerned that the efficiency of solar panels in the UK was around 10% and that this would mean that the level of electricity generated would be inefficient for the amount of land taken and would not provide the substantial benefit claimed by the Applicant. Overall, the IPs did not create their own calculation of the overall electricity likely to be generated and the Applicant in various submissions identified the various factors that affect load and yield. Whilst there was some different use of language between the more technically correct terminology of the Applicant and the IPs, I conclude that the general proposition that yields in the UK are around 10% is not incorrect. However, the Applicant has demonstrated the yield and energy that would be generated by the Proposed Development and the aggregated totals over the year and over the lifetime of the Proposed Development. I find no inherent issue with the Applicant's figures and accept these as a reasonable identification of the likely electricity output from the Proposed Development.

3.2.91. IPs were concerned at the Applicant's equivalence to the number of households that could be powered as they noted that the solar farm would produce energy intermittently and not at the same levels all year, therefore this was a misleading comparison. However, the context that the Applicant has used the comparison in the Planning, Design and Access Statement is only to give a guide as to what that amount of energy would power and is simply used as an indicator.

3.2.92. A further factor that can be considered in respect of the efficiency of the Proposed Development and the extent to which the level of energy produced is appropriate given the scale of the development is in relation to the overall size of the site. 2024 NPS EN-3 notes that along with associated infrastructure, generally a solar farm requires between 2 and 4 acres for each MW of output. The area covered by Work Number 1 in the application (the solar panels and balance of solar system plant) is approximately 476 hectares or 1,176 acres. This would indicate approximately 2.2 acres of land for each MW of capacity based on 531MW of installed capacity. The Proposed Development is therefore within the range set out in 2024 NPS EN-3 and is at the more efficient end of the spectrum.

3.2.93. 7000 Acres suggest that solar will represent a relatively small contribution to the total energy demand of the UK. They calculate that even on the basis of the provision of 90 GW solar will only deliver up to 10% of energy production and that a 500 MW solar scheme would therefore only contribute some 0.055% of the UK's annual demand. However, this ignores the contribution that solar is needed to make in terms of decarbonising the energy generation system, the increase in energy demand that would come forward and the urgent need to bring forward solar energy production. The Proposed Development in

combination with other solar and low carbon energy production would contribute to a mixed technology system and would support the move towards decarbonisation. I also note that a similar figure was referenced in the Little Crow Solar Project where the SoS concluded that it is appropriate to accord substantial positive weight to the project due to the contribution it would make towards the decarbonisation of the UK's energy production (paragraph 4.32 of the SoS decision letter). A similar weighting is given by the SoS in respect of the Longfield Solar farm's contribution to meeting the need for additional low carbon generation in the planning balance at paragraphs 4.6 and 4.7 of the SoS's decision letter.

3.2.94. The Applicant's figures do not include factors related to the Battery Energy Storage facility which would assist to some degree with intermittency and assist with grid balancing and potentially add to the level of electricity to be fed into the grid. The BESS electricity has been excluded from the Applicant's calculations in terms of Chapter 6 of the ES on Climate Change but would be additional benefits and support the factors considered above. I consider the BESS and Climate Change and Safety in other sections below in this Report.

Conclusion

3.2.95. I am satisfied that the Proposed Development would make a material contribution to the generation of low carbon energy. I am satisfied that the Applicant's estimates of energy production would appear realistic based on the size and scale of the Proposed Development. The Proposed Development would contribute to the urgent need for low carbon energy and the move to net zero. The Proposed Development has suitably considered potential alternatives and as a large-scale ground mounted deployment would, in association with other solar provision, including on rooftops and buildings, contribute to the Governments objective of 70 GW by 2035. The implementation of such schemes in association with other methods of solar deployment will be required to achieve the 70 GW target by 2035. The Proposed Development therefore has demonstrated that it would be in accordance with 2011 NPS EN-1, 2024 NPS EN-1 and 2024 NPS EN-3 including assisting in meeting the urgent need. I therefore afford the demonstrated need, likely deployed generating capacity and likely electricity generated as having great positive weight in the final balance.

3.3. AIR QUALITY

Introduction

3.3.1. This Section addresses the effects of the Proposed Development on air quality including in the construction, operational and decommissioning phases.

Policy Considerations

National Policy Statements

3.3.2. 2011 NPS EN-1 sets out the different functions of the planning and pollution control systems in relation to air quality matters. It confirms that the planning system is concerned with the development and use of land in the public interest and in improving the natural environment, public health and safety and amenity.

3.3.3. It further advises that consideration should focus on whether individual developments would be acceptable uses of land and on the impacts of that land use, rather than the control of processes, emissions or discharges themselves. The decision maker is entitled to assume that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced.

3.3.4. In terms of generic impacts advice on Air Quality is provided at section 5.2 of 2011 NPS-EN1 where it is advised air quality considerations should be given substantial weight where a project would cause new breaches of national air quality limits or substantial changes in air quality levels, even where no breaches would occur. Paragraph 5.2.10 of 2011 NPS EN-1 advises that account must be taken of any relevant statutory air quality limits.

3.3.5. Although some of the wording has changed similar advice has been included in 2024 NPS -EN1.

National Planning Policy Framework (NPPF)

3.3.6. The NPPF at paragraph 192 advises planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. It further advises that planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

Local Development Plan

3.3.7. West Lindsey District Council drew my attention to CLLP policies S14 and S53 which seek to ensure amongst other matters that new development would not unacceptably affect the amenity of neighbouring land uses through adverse effects on air quality including through the generation of dust.

The Applicant's Case

3.3.8. The Applicant's consideration and assessment of air quality is contained in Chapter 15 of the Environmental Statement [APP-024] which addresses 'Other Environmental Topics'. It is supported by a Dust Risk Assessment [APP-170], an Air Quality summary of non-significant effects

report [APP-171] and a report on Unplanned Atmospheric emissions from battery energy storage plan [APP-172].

3.3.9. The Chapter notes that the potential Zone of Influence (ZoI) for Air Quality includes sensitive human receptors within 350m of the site; and within 50m of the roads expected to be used by the construction phase traffic, and up to 500m from the site access points, which will be considered, following the Institute of Air Quality Management (IAQM) Guidance. It further notes the potential ZoI for ecological receptors is 50m from the boundary of the site; or 50m from the route(s) used by construction vehicles on the public highway, up to 500m from the site entrance(s). The closest nationally designated sensitive ecological receptor is identified as Ashton's Meadow Site of Special Scientific Interest (SSSI), which is approximately 1.5km to the west of the site. The nearest ancient woodland site is Burton Wood, which the chapter states is within the Order limits, but approximately 700m from a road. However, the Order limits now specifically exclude Burton Woods and other areas of woodland from the Order limits. Stag Wood is approximately 100m from the nearest road. As such, ecological impacts from dust generation are considered within the Dust Risk Assessment, however, ecological impacts from road traffic emissions are scoped out of the ambient air quality assessment, as there are no sensitive ecological receptors close enough to a road to have any risk of being affected by the Proposed Development.

3.3.10. The Applicant's Assessment is based on IQAM guidance and addresses dust generation, additional road traffic and plant emissions as well as the potential for operational impacts.

3.3.11. In terms of baseline conditions, the Applicant notes that there are no Air Quality Management Areas (AQMA) declared in WLDC. Concentrations of Nitrogen Dioxide (NO_2) and (Particulate matter) PM_{10} are considered to be very good across the district, which is rural with no large conurbations. It is also noted that all existing NO_2 diffusion tube monitoring sites operated by WLDC recorded concentrations below the relevant annual mean objective value of 40 micrograms per cubic metre ($\mu g/m^3$) since monitoring began. Monitoring locations are in Gainsborough and Market Rasen. There are none in Gate Burton or otherwise near the site. In terms of the baseline dust climate, it is noted that a background level of dust exists in all urban and rural locations in the UK.

3.3.12. The Applicant identifies that prior to mitigation the Proposed Development has the potential to affect sensitive receptors through dust deposition and soiling of surfaces, visible dust plumes, elevated PM_{10} concentrations as a result of dust generating activities on site and during operation through unplanned emissions resulting from a battery fire.

3.3.13. A table of Air Quality mitigation measures is provided at Table 51-3 and Activity Specific mitigation measures are provided at Table 15-4 in Chapter 15 [APP-024].

3.3.14. The Applicant concludes that dust generation during construction and decommissioning will be short-term and temporary and is not anticipated to induce significant effects on local air quality providing the adequate implementation of mitigation measures as outlined. The Applicant states air quality impacts during the construction and decommissioning phases are therefore expected to be negligible. Potential impacts on local air quality arising during the operation of the Proposed Development are anticipated to be less, so are also considered by the Applicant to be negligible.

3.3.15. In terms of cumulative effects, the Applicant concludes that no construction dust effects additional to those reported for the Proposed Development are identified, as each project will implement dust mitigation measures to ensure no off-site impacts.

3.3.16. There is the potential for cumulative impact of roads' emissions from construction vehicles. The Cottam and West Burton Solar projects have similarly scoped out the impact of construction vehicle emissions, but assuming each of those schemes have a similar number of vehicles as Gate Burton, there could potentially be a peak weekly average of 198 vehicle movements on local roads. To mitigate any potential effects, the Applicant suggests a joint CTMP may be produced in order to manage the construction traffic appropriately. The Applicant has also committed that if, once contractors are appointed there are likely to be more than 100 construction HGV movements per day, which is the IAQM criteria for further assessment, then a detailed air quality assessment will be undertaken and appropriate mitigation identified.

Views of IPs

Host Authorities

3.3.17. The Host Authorities in the various LIRs did not focus on Air Quality as a significant issue. It was identified by WLDC who noted the potential for significant effects from dust given the scale and extent of the Solar and Energy Storage Park. However in its Statement of Common Ground with the Applicant [REP6-012] it agreed that

> *"the methodology for the Environmental Assessment is sufficient and there is no disagreement over impacts on the following topics: climate change, cultural heritage, ecology and nature conservation, water environment, noise and vibration, human health and wellbeing, air quality, glint and glare, ground conditions, major accidents and disasters; socio-economics (in terms of employment, economics, public rights of way and local amenities) and minerals, waste and recycling." (my underlining)*

3.3.18. LCC and NCC raised issues related to the impact from traffic during construction including cumulative effects but did not specifically raise issues on matters related to air quality. Also, it is not addressed in the Statement of Common Ground between Nottinghamshire County Council and Bassetlaw District Council and the Applicant [REP6-014].

3.3.19. Issues around Air Quality specifically did not form a major point of contention in the Examination. Where it was raised by IPs this was generally in a generic manner and was predominantly in the context of impacts arising from construction activities.

Examination

3.3.20. In ExQ1 (ExQ1.2.1) [PD-006] I queried whether a single phase of construction was indeed a worst-case scenario as a longer construction period could result in effects over a greater period. The Applicant confirmed in its response [REP2-041] the shorter compressed period would result in the greatest number of vehicle movements focused into a short period and therefore would be the greatest effect from vehicle movements in terms of air quality.

3.3.21. In ExQ1 (ExQ1.13.1, 1.13.4, 1.13.6) I also asked a number of questions of various parties on construction traffic, the Framework Construction Traffic Management Plan (fCTMP), the Framework Construction Environmental Management Plan fCEMP) and cumulative effects. The Applicant's responses were included in [REP2-041] LCC's in [REP2-049] and NCC's in [REP2-053].

3.3.22. LCC as local highway authority for its area noted it accepted the methodology and conclusions of the Applicant's Transport Assessment (TA). NCC as local highway authority for its area confirmed it was satisfied with the methodology and conclusions of the TA [APP_166] and as reported in the ES Chapter 13 Transport and Access [APP-022].

3.3.23. During the Examination I also asked questions at ExQ2 [PD-009] on cumulative assessment of traffic (ExQ213.1 and ExQ2.13.2) and at ExQ3 [PD-013] on the cumulative assessment of Traffic and the fCTMP. Also at ISH3 session 3 dealing with other Environmental Matters I raised questions on construction traffic [EV-008j and EV-008l]. These matters were responded to in the various responses to my ExQ2 and ExQ3 questions and in the summaries of oral responses from various parties [see REP3-027, REP3-037, REP3-038, REP3-044, REP4-046, REP4-059, REP5-047, REP5-052, REP5-054] The Applicant submitted a joint Report on Interrelationships between Nationally Significant Projects which included reference to construction traffic movements and technical papers as appendices. A Final version of this was submitted at Deadline 6 [REP6-041 and REP6-043] The Applicant also submitted an fCTMP that was updated during the examination and a final version provided at Deadline 6 [REP6-011]. Although much of the information in terms of traffic movement and construction traffic was geared towards traffic impacts in terms of access and movement rather than air quality *per se* I have still had regard to the information contained in these documents with regards to movements and vehicles numbers.

Conclusions on Air Quality.

3.3.24. I accept that there is some potential for construction and decommissioning activities to impact on air quality, including from the

production of dust. However, I also note that these effects are likely to be temporary and short-term.

3.3.25. Furthermore, I have had regard to the embedded and additional mitigation proposed and accept that it would prevent or minimise the release of dust and/ or prevent it from being deposited on nearby receptors. I am satisfied that, with these best practice measures in place, there would be no significant effects as a result of changes to air quality during the construction, operation or decommissioning phases. The relevant measures are set out in the fCTMP [REP6-011] and the fCEMP [REP5-023] and are secured by Requirements 14 and 12 of the rDCO respectively. These also include monitoring and reporting measures and corrective action to be taken if necessary.

3.3.26. The air quality assessment undertaken adequately assesses impacts on air quality and I accept that no significant effects on air quality are likely to arise. In addition, I am satisfied that the measures set out in the fCEMP and secured in Requirement 12 and the fCTMP secured by Requirement 14 of the dDCO would ensure that any residual effects on air quality can be suitably controlled and/ or mitigated. No robust or detailed evidence was submitted into the Examination to counter the Applicant's presentation of evidence and responses.

3.3.27. On the basis of the information before the Examination I am satisfied that the cumulative effects associated with the Proposed Development in combination with other schemes including other NSIP schemes in the area are such that there would be no accumulation of direct air quality effects from construction activities on site given the embedded mitigation measures, best practice and further mitigation measures identified in Chapter 15 and secured through the fCTMP and fCEMP and the Requirements in the rDCO. Furthermore, in terms of the potential for cumulative HGV movements exceeding appropriate thresholds and requiring further assessment and mitigation this is adequately secured through the fCTMP which requires the approval of a detailed CTMP by the relevant highway and local authorities and which is secured through Requirement 12 in the rDCO.

3.3.28. I give further consideration to the effects arising from unplanned emissions to the atmosphere from a battery fire further below in this Report under Major Accidents and Disasters as it is more properly related to that issue.

3.3.29. Accordingly, I find that no Air Quality thresholds would be breached and the Proposed Development would accord with designated NPSs and national and local planning policy both by itself and cumulatively with the other developments in the area. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development and therefore does not affect the final balance.

3.4. BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

Introduction

3.4.1. This Section addresses the effects of the Proposed Development on biodiversity, ecology and the natural environment in relation to policy requirements and the EIA Regulations. Matters relating to HRA are reported in Chapter 4.

Policy Considerations

National Policy Statements

3.4.2. Paragraph 5.3.3 of 2011 NPS EN-1 sets out the importance of assessing, as part of the ES, the effects of the Proposed Development on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.

3.4.3. Moreover, paragraph 5.3.7 states that, as a general principle, development should aim to avoid significant harm to biodiversity interests including through mitigation. The NPS also requires an applicant to show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

3.4.4. In addition, paragraph 5.3.8 of 2011 NPS EN-1 advises that the SoS, in taking decisions, should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity interests within the wider environment.

3.4.5. Furthermore, paragraph 5.3.18 indicates that applicants should include appropriate mitigation measures as an integral part of their developments. They should also ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.

3.4.6. Similar advice can be found in 2024 NPS EN-1 while 2024 NPS EN-3 highlights the importance of design in mitigating the impacts and effects on ecology stating at paragraph 2.10.78 the applicant should use an advising ecologist during the design process to ensure that adverse impacts are avoided, minimised or mitigated in line with the mitigation hierarchy, and biodiversity enhancements are maximised. It notes that solar farms have the potential to increase the biodiversity value of a site at paragraph 2.10.89. It also advises that applicants should consider how security and lighting installations may impact on local ecology, with the location of pole mounted CCTV and lighting carefully considered so as to minimise impacts.

National Planning Policy Framework (NPPF)

3.4.7. Section 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment. This section of the NPPF indicates amongst other matters that planning policies and decisions should contribute to and enhance the natural and local environment through various means including: protecting and enhancing sites of biodiversity value; recognising the wider benefits from natural capital and ecosystem services; and minimising impacts on and providing net gains for biodiversity.

Local Development Plan Policies

3.4.8. Local planning policies recognise the value of biodiversity and seek to protect and enhance biodiversity and ensure ecological enhancement, improvements and benefits are secured including Biodiversity Net Gain. Policies also seek the protection of woodland and other features and habitats.

The Applicant's Case

3.4.9. Chapter 8 in the ES [APP-017] presents the Applicant's assessment of the likely significant effects on ecology and nature conservation. This was updated during the Examination [REP4-008] to correct referencing to long and short lists in relation to cumulative effects.

3.4.10. The Chapter is supported by a number of Appendices and Figures including the following (certain reports are confidential as they contain sensitive information in respect of protected species):

- Appendix 8-A: Legislation and policy relevant to ecology and biodiversity [APP-125];
- Appendix 8-B: Preliminary Ecological Appraisal report [APP-126];
- Appendix 8-C: Flora report (including hedgerows) [APP-127];
- Appendix 8-D: Terrestrial invertebrate report [APP-128];
- Appendix 8-E: Aquatic ecology report [APP-129];
- Appendix 8-F: Great Crested Newt survey report [APP-130];
- Appendix 8-G: Report on surveys for reptiles and other amphibians [APP-131];
- Appendix 8-H: Report on surveys for breeding birds [APP-132] confidential;
- Appendix 8-I: Wintering bird survey report [APP-133];
- Appendix 8-J: Report on surveys for bats [APP-134];
- Appendix 8-K: Report on surveys for riparian mammals [APP-135]; and
- Appendix 8-L: Badger survey methods [APP-136] Confidential [APP-136];
- Figure 8-1: Sites statutorily designated for biodiversity value [APP-048];
- Figure 8-2: Non-statutory sites designated for biodiversity [APP-049]; and
- Figure 8-3: Phase 1 Habitat survey [APP-050].

3.4.11. It is also supported by various management plans including:

- Framework Construction Environmental Management Plan (fCEMP) [REP5-023];
- Framework Operational Environmental Management Plan (fOEMP) [REP2-035];
- Framework Decommissioning Environmental Management Plan Strategy (fDEMP) [REP5-025];
- Outline Landscape and Ecology Management Plan (oLEMP) [REP5-031].

3.4.12. The Applicant has also included a Biodiversity Net Gain Assessment [APP-230].

3.4.13. The Applicant also notes that indirect effects to ecological receptors can occur through pollution of air and water and from changes in lighting, noise or hydrology. Therefore, ES Chapter 8 cross references to supporting information contained in ES Chapter 6 (Climate Change) [APP-015], ES Chapter 9 (Water Environment) [APP-018], ES Chapter 10 (Landscape and Visual Amenity) [REP2-010], ES Chapter 11 (Noise and Vibration) [APP-020] and ES Chapter 15 (Other Environmental Topics (which includes changes in air quality)) [APP-024].

3.4.14. In terms of baseline conditions the Applicant identifies that there are no sites of international importance within the identified ZoI and there are two sites statutorily designated for their biodiversity value within the ZoI. These are Ashton Meadows SSSI and Lea Marsh SSSI approximately 540m and 1.9km from the Order limits respectively. 15 sites of county importance that are non-statutorily designated for their biodiversity value are located within 2 km of the Order limits and are identified on [APP-049]. These sites have been designated as Local Wildlife Sites (LWS) for their biodiversity value at a county level. These include Cow Pastures Lane Drains LWS which is located within the Order limits in the GCC. Five areas of ancient woodland are identified within 2 km of the Order limits [APP-049], including Burton Wood which is encircled by the Order limits but not within them.

3.4.15. The Applicant notes that the Order limits encompass approximately 824 ha (with the Solar and Energy Storage Park being approximately 652 ha and the GCC being approximately 172 ha) and are dominated by arable fields (c. 659 ha). This intensive arable farming (with crops in 2022 including wheat, field beans, maize and Miscanthus) is reliant on a high degree of control of the water table achieved through a network of temporary drainage ditches and drains, as well as inputs of fertiliser and a range of pesticide use. Other habitats within the Order limits include improved and semi-improved neutral grassland fields (c. 109 ha), mature trees and hedges (c. 46km), small, wooded copses (c. 4.7 ha) and two ponds. The surrounding habitat is mainly arable with mature broadleaved woodland (plantation, semi-natural and ancient).

3.4.16. In terms of the baseline position the legally protected and notable species within 2 km of the Order limits are identified in Table 8-8 of the ES Chapter 8 [REP4-008]. These include:

- Atlantic salmon and European eel, which use the River Trent,

- Great Crested Newt presence in two water bodies outside of the Order limits,
- Grass Snake and Common Lizard within the Order limits, common Frog present within the Order limits, but no other amphibian species recorded
- Two territories of Black Redstart within the ZoI (200m Survey Area) of the Grid Connection Corridor (Nottinghamshire) ZoI. Population of Skylark within the Solar and Energy Storage Park. Single territories of Quail, Hobby and Barn Owl within the Solar and Energy Storage Park and single territory of Peregrine within the ZoI of the Grid Connection Corridor (Nottinghamshire).
- Foraging / commuting activity throughout of common and rarer bat species with potential for roosts within and adjacent to the Order limits.
- Population of Otter using the River Trent.
- Population of Water Vole in ditches within the Order limits
- At least four separate Badger social groups present within or in the vicinity of the Order limits.
- Presence of Brown Hare within the Order limits. Assumed presence of Hedgehog within the Order limits.

3.4.17. The Applicant identifies the potential impacts that could arise from construction, operation and decommissioning at section 8.8 of the ES Chapter 8 and then goes on to identify embedded mitigation measures in section 8.9 which are incorporated into the Proposed Development design to seek to avoid and mitigate any adverse significant effects. The embedded mitigation measures are set out at Table 8-10 of Chapter 8 of the ES. These include but are not limited to scheme design to avoid direct effects including developable areas to avoid specific habitats, retention of arable margins, use of Horizontal Directional Drilling (HDD), careful siting of accesses and compounds for construction activities, protective fencing for hedges etc, timings of works, pollution prevention measures. The measures are secured through the fCEMP [REP5-023] which is secured through Requirement 12 of the rDCO. The fOEMP [REP2-035] details the measures required to minimise operational impacts and the fDEMP [REP5-025] details the measures to mitigate any decommissioning related effects on biodiversity. These are secured through Requirements 13 and 19 respectively in the rDCO. The Requirements require the approval of detailed management plans substantially in accordance with the Framework Plans which are agreed and identified as certified documents as part of the DCO.

3.4.18. Following an initial assessment, one non-statutorily designated site was identified with the potential to experience significant effects (Cow Pastures Land Drains LWS) (see table 8-11 of ES Chapter 8). In terms of habitats and species (table 8-12) the Applicant identified running water, hedgerows and breeding birds (population of skylark (*Alauda arvensis*)) where there was the potential for an effect to occur. For running water and hedgerows the further assessment concluded that minor adverse effects may occur which were not significant. For skylark as a breeding bird population, the ES concluded a moderate adverse effect that is significant where the development would undermine the long-term

viability/ stability of the population (see Table 8-13 of ES Chapter 8) due to the loss of habitat, before any mitigation.

3.4.19. The Applicant identifies additional mitigation to avoid this moderate adverse effect that is significant which has been incorporated into the Proposed Development's design and which is secured and identified through the Outline Landscape and Ecology Management Plan (oLEMP) [REP5-031] which includes an Outline Landscape Masterplan in Annex A that identifies the location of these measures. The measures identified include large areas (over 6.7ha) of excluded panel locations and some 122 ha of undeveloped land across the Order limits. These areas will be planted with diverse grassland seed mixes to maximise nesting habitat. The Proposed Development incorporates wide margins along internal tracks where similar grassland treatments will be incorporated. Areas are targeted for skylark management where existing hedgerows will be maintained to minimise loss of openness. To further reduce predation perimeter fencing will not include passages for mammals as is proposed elsewhere.

3.4.20. The Applicant notes habitat creation and enhancement measures have also been included within the design of the Proposed Development. A number of the mitigation measures identified within the oLEMP are embedded or additional mitigation for the purposes of landscape and visual assessment and provide enhancement for biodiversity. These include woodland planting, hedgerows, scrub, natural regeneration areas, species rich grassland, pond restoration, provision of habitat boxes and the creation of habitat piles. These are summarised at table 8-14 in chapter 8 of the ES.

3.4.21. The Applicant concludes that with the application of the additional mitigation measures set out above, no residual significant adverse effects have been identified during construction, operation or decommissioning of the Proposed Development. With consideration of enhancement measures set out above, the Proposed Development has the potential to result in significant beneficial effects to broad-leaved woodland, including ancient woodland, hedgerows and breeding birds, particularly farmland birds associated with hedgerows and field margins, but without specifying which particular farmland birds.

3.4.22. In terms of Biodiversity Net Gain the Applicant's report concludes that based on current knowledge of the Order limits and the Proposed Development's design, including the commitments made in the oLEMP [REP5-031], the Proposed Development is predicted to result in a net gain of 70.95% for area-based habitats, 37.24% for hedgerows and a net gain of 14.22% for rivers. This is, however, caveated with the Applicant noting that the outputs of the metric are dependent on all retained and enhanced habitats meeting the target conditions, subject to the criteria outlined within Natural England's Biodiversity Metric 3.1 User Guide and Technical Note. Habitats would need to be monitored to ensure correct establishment and growth, and remedial action would need to be taken if this does not proceed as expected, otherwise the target conditions used in the calculations may not be met and the predicted biodiversity units

might not be achieved. Details of monitoring prescriptions and intervals are presented in the oLEMP and in which section 4 addresses pre and post construction monitoring. Results from the monitoring would then be fed into the management plan and, if required, management would be amended accordingly based on the monitoring results.

3.4.23. The Applicant has also considered cumulative effects following a review of the shortlist of cumulative schemes, the Applicant considers that the West Burton Solar Project and the Cottam Solar Project have the potential to result in cumulative effects with the Proposed Development, where the cumulative loss of arable farmland has the potential to reduce nesting and foraging habitat for Skylark. The Applicant assumes that neither project will result in residual adverse effects and that there will be no significant cumulative effect arising from the three projects on Skylark populations from loss of arable farmland as each will accommodate its own mitigation to any identified adverse effects.

3.4.24. The GCC has the potential to be shared with the Cottam and West Burton solar projects. Two scenarios have been assessed: that all projects are installed within the same construction programme; that a sequential installation occurs. The Applicant concludes at paragraphs 8.13.7 – 8.13.11 of chapter 8 of the ES [REP4-008] that the areas of greater value to wildlife will be avoided during construction, with the routing of cables and construction compounds being located to avoid potential sensitive receptors, avoiding impact pathways, reducing the risk of habitat fragmentation and loss of connectivity. It is therefore predicted that neither scenario will result in significant cumulative effects arising from the three projects. Where practicable, joint mitigation will be undertaken with Cottam and West Burton solar projects within the shared GCC to manage environmental effects. The detailed CEMP(s) will outline all ecological mitigation, which will likely include combined pre-construction surveys, protected species mitigation, translocation (if required), monitoring and post construction reinstatement plans. The Joint Report on Interrelationships between NSIPs [REP6-041] at paragraph 5.5.1 states joint ecological mitigation is secured in the CEMP by Requirement 14.

Views of IPs

Natural England

3.4.25. Natural England submitted RRs) [RR-193] and concluded a Statement of Common Ground (SoCG) with the Applicant [REP6-016]. In its RR it noted that overall NE is satisfied that the proposals address the majority of potential impacts to the natural environment. It raises two matters where it requires further information and/or an assessment, one related to soils and BMV land and secondly on clarification on the need for protected species licences. BMV is addressed in section 3.11 of this Report.

3.4.26. In the SoCG NE agreed with the Applicant that there are no impact pathways from the Proposed Development to international sites and appropriate buffers to locally designated sites (such as LWSs) are

secured through the fCEMP and the Outline Design Principles to avoid potential impacts. Habitat buffers, such as those around ancient woodland, and new ecological networks (such as hedgerow creation and woodland planting) created within the Order limits will be of benefit to locally designated sites that are adjacent to the Proposed Development. NE further agreed that a requirement for protected species licencing had not been identified as part of the assessment.

The Environment Agency

3.4.27. The Environment Agency submitted RRs [RR-270], Written Representations [REP2-061] and a SoCG signed with the Applicant [REP6-018], along with other responses during the Examination. The RR, WR and SoCG set out its position on the Proposed Development.

3.4.28. In its RR the EA covered a number of matters in relation to Ecology and Nature Conservation including the construction of new culverts, Sustainable Drainage Systems (SuDS), the fCEMP, the Outline Design Principles, BNG and river restoration projects. In its subsequent WR it confirmed that the concerns raised on ecology and biodiversity had been resolved and the SOCG had been updated to reflect the agreed position.

3.4.29. In relation to Ecology and Biodiversity the EA agree in the SoCG no displacement is required for riparian mammals. Pre-commencement surveys will be undertaken to determine whether baseline conditions remain the same as those assessed in the ES and inform whether updated mitigation measures are required to ensure that there will be no impediment to movement or impacts on fish and eel populations. Minor and temporary vibrations may be experienced during drilling, but these are not expected to be of an intensity or duration sufficient to cause an impact. The EA further agreed with the Applicant that the probability of adverse effects from Electromagnetic fields (EMF) from cables buried beneath watercourses both alone and cumulatively with other schemes, on fish is low, and therefore not significant, based on the secured minimum buried depth of the cable.

Host Authorities

3.4.30. NCC in its LIR [REP-045] identifies Policy SO2 (care for the environment) which amongst other matters, seeks to protect wildlife and valuable habitats from harmful development. It requests the Examiner seeks the views of statutory bodies including the Wildlife Trust, Natural England and the Environment Agency as it does not have professional in-house expertise to comment on ecological designated sites. NCC along with BDC entered into a SoCG with the Applicant [REP6-014] and in which NCC agreed that there are no areas of disagreement between NCC and the Applicant regarding the Proposed Development's impacts on ecology and biodiversity.

3.4.31. BDC in its LIR [REP-038] drew attention to policy DM9 and DM10 of the BCS 2011 which seek to protect biodiversity and Objective 4: Natural environment (page 15) of the Rampton and Woodbeck Neighbourhood Plan which aims to "*manage new development so it respects and*

enhances our natural environment and our natural assets such as the River Trent and its associated wildlife, the wider countryside and biodiversity of the area".. BDC also notes that, the Applicant appears to have done a thorough analysis in respect of ecology and biodiversity; however, the Council does not have professional in-house expertise in this regard. It notes BDC would therefore request that the examiner seeks analysis from Natural England and the Environment Agency in respect of this issue. BDC, along with NCC, has entered into a SoCG with the Applicant [REP6-014] and in which it agrees that there are no areas of disagreement between BDC and the Applicant regarding the scope and methodology of the ES in relation to ecology and biodiversity.

3.4.32. LCC provided a Relevant Representation [RR-148], a LIR [REP-043], WR [REP2-051] and entered into a SoCG [REP6-022] with the Applicant setting out its substantive cases and in which it comments on biodiversity. LCC draws attention to policy S14 of the CLLP 2023-2043 which includes reference to considering the impacts of various matters including biodiversity. Policy S60 which seeks to protect biodiversity and geodiversity and S61 which seeks BNG. Policy S66 seeks to protect trees hedgerows and woodlands. LCC does not specifically address biodiversity but does recognise as a positive benefit the potential of the Proposed Development to deliver significant biodiversity net gain through the creation, mitigation and enhancements proposed. In respect of Ecology and Biodiversity LCC agreed in the SoCG with the Applicant that the Proposed Development will provide significant BNG benefits through creation of mitigation and enhancements.

3.4.33. WLDC provided, amongst other documents, a Relevant Representation [RR-288], a Written Representation [REP2-056], a LIR [REP-053], entered into a SoCG with the Applicant [REP6-012] and provided a summary statement on matters that have not been resolved during the examination [REP7-003]. For matters related to ecology and biodiversity WLDC draws attention to policy S15, Policy S60, S61 and S66.

3.4.34. WLDC's LIR notes the report on surveys for bats, records potential for bat roosting within trees including 38 with moderate or high suitability and buildings (including one with high suitability) but no surveys were undertaken to determine roost status or usage by bats. It notes the BNG conclusion is welcome; however, it states this is reliant on the LEMP which will need to be adequately secured in combination with the proposed topic specific draft DCO requirement (requirement 8). WLDC disagrees with the conclusion of 'Local' biodiversity value for habitats which include veteran trees. WLDC also states that ancient woodlands adjacent to the Order limits (as listed in par 8.7.6) are a potential receptor and should be valued and impacts considered.

3.4.35. WLDC notes that both Burton Wood and Long Nursey will be completely encircled by the Proposed Development, Table 8-12 and notes it seems irrational to completely dismiss any potential for effects.

3.4.36. WLDC identifies that Chapter 8 Table 8-12 identifies that black redstarts are a species that can be sensitive to disturbance and so are concerned

that they are likely to be impacted during construction and that the assessment does not explain the conclusion sufficiently in line with the methodology applied. WLDC notes that the construction assessment states that black redstart are 'a species that can be sensitive to disturbance' and that 'there will be increased noise levels during construction works, e.g., site clearance, which may cause some disturbance'. WLDC therefore question how can this support a conclusion that there is no potential for an effect to occur?

3.4.37. WLDC also note Chapter 8 Table 8-13 provides an assessment of adverse impacts of the Proposed Development but only two receptors (IEFs) are noted in the table: hedgerows, where effects are concluded to be minor adverse and not significant and Skylark where effects are considered to be moderate adverse and significant. However, WLDC are of the view based on comments and observations above in relation to Table 8-12, that it is possible that additional receptors should be considered.

3.4.38. In respect of Chapter 8 Table 8-13 WLDC comment that this table provides assessment of enhancements, of which significant beneficial effects are concluded in relation to broad-leaved woodland, hedgerows, and breeding birds (general). These conclusions are reliant on delivery of planting and management as delivered by the LEMP and would be reliant on this document being adequately detailed and secured by the DCO. However, WLDC consider that it is worth noting that these enhancements seem to be considered in isolation from any negative impacts to the Proposed Development, many of which have been discounted at Table 8-12.

3.4.39. In their SoCG WLDC agreed matters in relation to: Bat surveys, BNG conclusions (albeit the oLEMP needs to be secured through requirement 8), conclusion of no effect on Black Redstart, adverse effects reported in table 8-13, agreed the effect of vehicle emissions has been taken into account and agreed the mitigation enhancements. WLDC however maintain areas of disagreement in relation to: the Applicant's definition of 'local' biodiversity habitats and effects on Burton Wood and Long Nursery as ancient woodland.

Other IPs

3.4.40. Lincolnshire Wildlife Trust provided a Relevant Representation [RR-149] along with a number of other IPs including local residents, interest groups and parish councils which raise issues that touched on ecology and biodiversity amongst other matters. Included within these are submissions from the group '7000 Acres' including [REP2-082] which specifically addresses wildlife and habitat, and from Roy Clegg [REP-089 and REP4-081] who provided submissions on EMF and effects on aquatic life. In summary, these included concerns regarding:

- the loss of wildlife habitats in general;
- the impact on flora and fauna in general;
- a general perceived loss in biodiversity;
- solar farm biodiversity net gain claims are unproven in the UK at this scale;

- failed to explain how BNG would be achieved, nor is it clear what methodology or assumptions lie behind the assertion;
- inadequate wildlife corridors for roaming wildlife, disruption for wildlife access;
- the adequacy of buffers to woodland;
- the adequacy/sufficiency of the proposed mitigation;
- the effect of fencing on wildlife;
- the effect on nesting birds including red listed birds;
- the effect on protected or notable species including badgers; invertebrates, reptiles, bats, owls etc;
- the effect of EMF on fish and aquatic life;
- the effects on ancient woodland and mature trees; and
- the loss of significant areas of hedgerow.

Examination

3.4.41. During the Examination I raised questions in my ExQ1 [PD-006] on ecology and biodiversity matters where I sought clarification on Protected Species licencing, BNG, and the decommissioning process and returning land to its original use. The Applicant responded in [REP2-041] to confirm that it had reached agreement with NE on Protected Species licencing and the SoCG had been updated. Furthermore, the Applicant explained how it had mitigated habitat and local wildlife site fragmentation by enhancing connectivity through woodland buffers and natural regeneration, hedgerow enhancement and provision of species rich grassland corridors along hedgerows which are secured through the oLEMP in Requirement 7 of the dDCO. The Applicant provided further explanation and justification for the use of modified grassland in the solar array panel footprints to assist with habitat creation and explained why woodland or wetland habitat creation in the solar array footprint was not appropriate as this could lead to shading or poor ground conditions.

3.4.42. At ExQ2 I sought further response from the EA in respect of the impact of EMF on ecology as it had confirmed at Deadline 3 it would review the matter. The EA's final response on EMF confirmed it agreed there would be no significant effect and this was confirmed in its SoCG with the Applicant [REP6-018].

3.4.43. At ExQ3 [PD-013] I raised the issue of EMF and its effect on fish with the Applicant following EA's request for a risk assessment [REP4-063]. As noted above the final position between the Applicant and the EA is provided in the SoCG which confirms no significant effect.

3.4.44. During the Examination the various management plans were updated and the latest versions are identified above.

Conclusions on Biodiversity Ecology and the Natural Environment

3.4.45. Paragraph 5.3.8 of 2011 NPS EN-1 advises that the SoS, in taking decisions, should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for

the conservation of biodiversity; and to biodiversity interests within the wider environment. This is reflected in 2024 NPS EN-1.

3.4.46. The Applicant has confirmed that there are no internationally designated sites within the ZoI and therefore no impact pathway for effect. NE has confirmed it agrees with these conclusions. Consideration of HRA issues is set out at section 4 of this Report below.

3.4.47. In terms of nationally identified sites only two SSSIs are identified within the 2 km study area. The conclusion of no likely significant adverse effects on these sites is not disputed by any of the statutory parties.

3.4.48. LCC and BDC in their SoCG confirm that they have no areas of disagreement in relation to biodiversity, ecology and nature conservation with the Applicant. Similarly, LCC do not raise any issues around these matters. WLDC following initial comments, maintained areas of concern related to Local habitat sites and ancient woodland. I deal with ancient woodland below.

3.4.49. In Chapter 8, the Applicant identifies 15 LWS sites within the ZoI that could be impacted with only Cow Pastures Lane Drains LWS being in the Order limits. After taking mitigation into account, the Applicant concluded there will be no indirect impacts that would affect the Cow Pastures Lane LWS, there would be no species mortality of any species associated with it and there are no impact pathways that would impact on its integrity or functioning. The effect was therefore identified as minor adverse and not significant. The mitigation included embedded mitigation, the use of HDD and a temporary bailey bridge for crossing if necessary. The Applicant has identified avoidance areas in the GCC to identify where HDD would be used, and which are secured through the ODP [REP6-009] and through the use of the management plans which would mitigate any harms identified such that they are not significant.

3.4.50. The concerns of WLDC relate to the identification and characterisation of areas of importance for ecology and on which it argues the sensitivity of the receptor is greater than the Applicant considers in its ES. I consider the Applicant's methodology is robust and is not challenged by the other host authorities or statutory parties with an interest in ecology.

3.4.51. NE and the Applicant have concluded that presently there is no identified need for protected species licences and that should the situation arise where licences are required, this will be identified by the Ecological Clerk of Works and applied for at the time. This is secured through the oLEMP [REP5-031] and fCEMP [REP5-023].

3.4.52. The only potentially significant adverse effect identified by the Applicant is for Skylark due to loss of habitat. Both embedded and additional mitigation are proposed and secured through the oLEMP [REP5-031] to create Skylark habitat and solar panel exclusion zones, secured through the ODP [REP6-009], would safeguard areas of land within the Solar and Energy Storage Park from development, thereby further safeguarding

habitat that is created. With these matters taken into account the Applicant concludes that there are no significant residual effects.

3.4.53. The Applicant identifies five areas of ancient woodland in close proximity to the site. None are located within the Order limits, however, Burton Wood and Long nursery are surrounded by the Order limits. WLDC is concerned that the proposed buffer is insufficient to protect the woodlands from adverse effects. The ODP [REP6-009] identifies a 15m buffer from ancient woodland and this is secured through the rDCO. NE has confirmed that the buffer is adequate to protect the ancient woodland from any direct effects and that they do not identify any indirect effects that are likely to impact the ancient woodland. The oLEMP [REP5-031] includes an Outline Landscape Masterplan in Annex A which includes a number of mitigation measures, habitats and landscape features including woodland buffer areas, and additional planting that would improve connectivity between the woodlands and surrounding area. Overall, there is no evidence before the Examination which demonstrates that there would be a likely significant effect on ancient woodland and NE does not disagree with the conclusions in the ES with regard to the impact on ancient woodland.

3.4.54. A number of IPs raised concerns that the Applicant's methodology for assessing BNG was unclear and that the results are neither robust nor secured. The Applicant provided a BNG Assessment [APP-230] which is based on Defra's metric 3.1 considered by the Applicant to be the most appropriate metric at the time of the assessment. The conclusion of the assessment was that the Proposed Development would achieve a minimum of 10% BNG but that it was likely to be substantively more. Based on current knowledge the assessment concluded that given the Order limits and the Proposed Development's design, including the commitments made in the oLEMP [REP5-031], the Proposed Development is predicted to result in a net gain of 70.95% for area-based habitats, 37.24% for hedgerows and 14.22% for rivers. The Host Authorities accept that the Proposed Development would provide BNG and LCC agreed in its SoCG with the Applicant that that the Proposed Development would provide significant Biodiversity Net Gain benefits through creation of mitigation and enhancements. Mitigation for biodiversity is not a gain as it is provided to mitigate an adverse effect on biodiversity but where there is creation of additional habitat and mitigation for landscape effects and other effects these are reasonably identified as gains. Overall, I am satisfied that the Biodiversity Net Gains identified by the Applicant are reasonable.

3.4.55. The issue of how such gains can effectively be secured is a matter that has been raised by a number of IPs. Requirement 8 of the rDCO includes a requirement to have a BNG strategy submitted and agreed substantively in accordance with the oLEMP [REP5-031]. The oLEMP [REP5-031] is further secured in Requirement 7. Within the oLEMP [REP5-031] there are requirements for monitoring and actions to be undertaken across short, medium and long-term time frames. In association with the fCEMP [REP5-023] secured through Requirement 12, the oLEMP [REP5-031] secured through Requirement 13 and the fDEMP

[REP5-025] secured through Requirement 19 I consider there are reasonable management plans and safeguards in place that would introduce, manage and monitor the required mitigation and respond to any issues such that a reasonable degree of confidence can be placed on the BNG assessment and the projected gains. However, these are not guaranteed and therefore I give this a moderate positive benefit.

3.4.56. Concerns have been expressed that the Proposed Development would result in the significant loss of hedgerow in the locality. Hedgerow removal is identified on the Vegetation Removal Plan [CR1-003] which included the additional land under the Change Request. The Applicant has identified in the oLEMP [REP5-031] that the Proposed Development would include in the order of:

- 6.52 km of new native hedgerow planting, including hedgerows with trees;
- 11.77 km of native hedgerow enhancement;
- 1.871 ha of land for natural regeneration;
- 1.036 ha of native linear tree and shrub belts measuring 10-15m wide;
- 429.78 ha of new species rich grassland below solar arrays; and
- 108.995 ha of new grazing meadow mix grassland in open areas and around the perimeter of proposed solar arrays.

3.4.57. Overall, I conclude that with the additional hedgerow, hedgerow replacement and enhancement of hedgerows along with other BNG enhancement measures that a reasonable balance has been struck and there is no significant adverse effect resultant from the loss or removal of hedgerow.

3.4.58. During the Examination concerns were raised that the Proposed Development's cables crossing beneath the River Trent (via HDD) may cause EMF impacts to fish species. This includes fish as features of the Humber Estuary Special Area of Conservation (SAC). This is discussed further in section 4 of this Report. Following a request from the EA, the Applicant undertook a risk assessment of impacts from EMF from the cable crossing to ecological receptors. This concluded that as the cable would be buried at a minimum of 5m below the riverbed (as secured in the ODP [REP6-009]), and given the tidal nature of the river, the limited span of any affected area, and the limited time any fish would be within the zone that the likelihood of a significant effect was low and not significant. The EA in its SoCG with the Applicant agreed with this conclusion and NE did not raise any concerns in respect of this matter in their SoCG submitted at deadline 6. Overall, there is no scientific evidence before the Examination that would, based on a precautionary approach, lead to a reasonable conclusion that there would be a significant effect on species in the River Trent. I therefore conclude that this does not weigh against the proposal in the final balance.

3.4.59. The Applicant in the ES has considered cumulative effects including in association with Cottam and West Burton. A further assessment in the Joint Report on Interrelationships between Nationally Significant Infrastructure Projects [REP6-041] includes further consideration of

cumulative effects to also include Tillbridge Solar project, which concludes that there is no change to the conclusions in the ES and no further assessment is required. In effect the conclusion is that in relation to the Solar and Energy Storage Park there are no significant biodiversity effects that are not mitigated and that each of the other developments would mitigate the effects on their sites including in respect of Skylark and therefore there is no cumulative effect. In the context of where there is shared activity in the shared GCC the ES concludes the areas of greater value to wildlife will be avoided during construction, reducing the risk of habitat fragmentation and loss of connectivity (through securing avoidance areas and design in the ODP). It is therefore predicted that neither scenario (either concurrent or sequential working) would result in significant cumulative effects arising from the three projects. Where practicable, joint mitigation will be undertaken with Cottam and West Burton solar projects within the shared GCC to manage environmental effects. The detailed CEMP(s) would outline all ecological mitigation, which would likely include combined pre-construction surveys, protected species mitigation, translocation (if required), monitoring and post construction reinstatement plans. The CEMP is secured through Requirement 12 of the rDCO. I consider this would provide reasonable safeguards and ensure the prediction that neither scenario would result in significant effects is met. Furthermore the NPS encourages working together, which the Applicant has demonstrated they have done and are continuing to do so.

3.4.60. Overall, in terms of Ecology, Biodiversity and the Natural Environment I am satisfied that the mitigation hierarchy has been appropriately applied. The Proposed Development's design incorporates avoidance of the most sensitive locations and embedded mitigation secured in the design and through the ODP identifies appropriate avoidance and mitigation measures. Where there have been minor adverse effects identified these have been reduced through additional mitigation. Overall, the avoidance mitigation and enhancement measures have resulted in no residual significant adverse effects in respect of Ecology for the Proposed Development alone and cumulatively with other schemes in the area. The Proposed Development would result in BNG and this is secured through Requirement 8 and Requirement 7, which secures the oLEMP. The NPS requires an applicant to show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests and I am satisfied that the Applicant has suitably accommodated the mitigation hierarchy and has sought to conserve and enhance biodiversity in accordance with the NPS both for the proposed Development alone and cumulatively. I afford the positive BNG moderate positive weight for the reason given above. I further conclude that there would be no adverse effects on biodiversity, ecology and the natural environment including resultant from effects on ancient woodland, or EMF and these do not affect the planning balance.

3.5. CLIMATE CHANGE

INTRODUCTION

3.5.1. This Section focuses on the Applicant's consideration of the Proposed Development's carbon savings in further support of the overall need case which has been considered in detail in Section 3.2 of this Report.

3.5.2. It does not address flood risk which is addressed in the Water Environment Section later in this Report.

Policy Considerations

National Policy

3.5.3. The Climate Change Act 2008 sets a target for the year 2050 for the reduction of targeted greenhouse gas emissions and to provide for a system of carbon budgeting (amongst others). The Climate Change Act 2008 (2050 Target Amendment) Order 2019 amended the 2050 target in the Climate Change Act 2008 to "*net zero*" i.e., that the net UK carbon account, in terms of carbon dioxide and other targeted greenhouse gases, for the year 2050 is at least 100% lower than the relevant baseline year. The Carbon Budgets Order 2009, Carbon Budget Order (2011) Carbon Budget Order (2016) and Carbon Budget Order (2021) set the carbon budgets for relevant budgetary periods.

National Policy Statements

3.5.4. Part 2 of 2011 NPS EN-1 explains that the Government is committed to meeting the legally binding target to cut carbon emissions by at least 80% (from 1990 levels) by 2050. That reduction target was subsequently revised to 100% in June 2019 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019.

3.5.5. The 2011 NPS recognises that delivering this change will be a major challenge for energy providers. The focus of Government activity in this transformation is to facilitate investment by the private sector in new low-carbon energy infrastructure to contribute to climate change mitigation and to ensure security of supply.

3.5.6. Part 3 of 2011 NPS EN-1 highlights the need for all the types of energy infrastructure covered by the NPS for energy security and to reduce greenhouse gas emissions dramatically.

3.5.7. 2024 NPS EN-1 states there is a CNP for the provision of low carbon infrastructure, which includes low carbon electricity generation. It further confirms that solar, along with wind, is expected to be the main form of electricity generation in an energy system that meets the Government's objectives for delivering secure, affordable energy and meets its climate change commitments.

3.5.8. 2024 NPS EN-3 recognises that solar is a key part of the Government's strategy for low-cost decarbonisation of the energy sector.

Local Development Plan Policy

3.5.9. BDC in its LIR draws attention to policies DM4 and DM10 which provide clear support for carbon reduction and low carbon energy infrastructure including large scale renewable and low carbon energy proposals although these are caveated by other criteria that need to be met to ensure policy compliance including safe-guarding the natural environment, the character and distinctiveness of the area, amenity and high grade agricultural land amongst other matters.

3.5.10. LCC in its LIR recognises that solar energy development can help meet targets for reducing carbon emissions, reduce reliance on fossil fuels and provide local energy security. It further states that by its nature the Gate Burton Scheme offers significant positive impacts in terms of clean renewable energy and the transition and movement towards Net Zero however in order to be supported it must be demonstrated that there are no significant adverse environmental impacts that cannot be appropriately managed and/or mitigated through the DCO process.

3.5.11. NCC draws attention in its LIR to its waste core strategy and policy SO4 of the CLLP 2023-2043 which encourages the efficient use of natural resources and promotes waste as a resource to be reused.

3.5.12. WLDC in its LIR draws attention to policies S11, S14 and S16 of the CLLP 2023-2043 which seek to ensure embodied carbon is reduced as far as possible, support renewable energy subject to consideration of adverse effects being made acceptable and support wider energy infrastructure necessary for the transition to net zero carbon (with proposals taking all reasonable steps to mitigate any harm arising).

The Applicant's Case

3.5.13. The Applicant's case on climate change and carbon reductions is set out in the ES and is expanded upon in other Examination documents these include:

- Chapter 6 of the ES [APP-015].
- Planning Design and Access Statement [REP6-004 and REP6-006].
- Applicant's Response to Relevant Representations [REP-032].
- Applicant's Response to Written Representations [REP3-033].
- Applicants Responses to ExQ1 [REP2-041].
- Written Summary of the Applicant's Oral Submission at Issue Specific Hearing 3 (ISH3) [REP3-027].
- Applicant's response to Rule 17 request – waste [REP6-045].
- Applicants closing submissions [REP7-001].

3.5.14. The Applicant's assessment of Carbon is based on a lifecycle Green House Gas (GHG) impact assessment, Climate change resilience (CCR) assessment and an in-combination climate change impact (ICCI) assessment. In this Section of this Report it is primarily the GHG assessment that is of relevance as the other matters relate to the environmental consequences and resilience measures that may be required. Chapter 6 of the ES sets out the parameters assessed and

components. This includes the identification of a reference PV panel Jolywood JW-D144N-166 module rated at 470 Watts (W) for which the environmental product declaration is used to detail embodied carbon. There is also identification of embodied carbon for other elements of the Proposed Development by reference to benchmarks. The assessment also includes details and assigned carbon emissions from the transportation of components, materials and waste amongst other matters. The assessment includes emissions arising from the construction, operational and decommissioning phase.

3.5.15. The greatest GHG impacts occur during the construction phase as a result of the manufacture of the materials and components required. The manufacture of the PV Panels is estimated to account for 257,849 tCO_2e, with the manufacture of the BESS leading to a further 77,500 tCO_2e based on the indicative site layout plan and the description of the Proposed Development provided in Chapter 2 of the ES. Based on the Proposed Development's details and assumptions total GHG emissions from the construction phase are estimated to equate to around 408,446 tCO_2e. Table 6-20 in the ES summarises the overall construction emissions from various emissions' sources.

3.5.16. Total operational emissions over the design life of the Proposed Development are estimated at 454,350 tCO_2e. 95.9% of this figure results from the supply of replacement components, with the remaining 4.1% the result of ongoing operational emissions.

3.5.17. Table 6-22 in Chapter 6 of the ES [APP-015] summarises the emissions resulting from the decommissioning phase and identifies 11,324 t CO_2e.

3.5.18. Lifetime emissions from the construction, operation and decommissioning of the Proposed Development are summarised in Table 6-23 in Chapter 6 of the ES [APP-015]. The sum is 899,933 tCO_2e being emitted over the Proposed Development's lifetime. This is prior to consideration of the CO_2e avoidance that can be attributed directly to the Proposed Development.

3.5.19. A total energy generation figure of around 26.986 TWh over the 60-year Proposed Development's lifetime has previously been identified. Dividing this lifetime generation figure into the lifetime emissions total shown in Table 6-23 of ES Chapter 6 gives a total carbon intensity value (carbon intensity refers to how many grams of carbon dioxide (CO2) are released to produce a kilowatt hour (kWh) of electricity) of 33.35 gCO_2e/kWh according to the Applicant.

3.5.20. The Applicant then seeks to contextualise this as advised by IEMA guidance. The Applicant notes that the current UK grid carbon intensity is 212 gCO_2e/kWh, however, these figures cannot be directly compared as the published UK grid carbon intensity figure only takes into account operational emissions from the generation of electricity, overwhelmingly from the fossil fuels used to power gas-fired and occasionally coal-fired power stations. The Applicant therefore concludes that for a meaningful comparison to be made between the Proposed Development and the UK

grid, the operational carbon intensity of the Proposed Development must only include emissions from the ongoing operations of the Proposed Development and exclude emissions from construction and decommissioning. Combining lifetime generation figures and operational emissions figures gives an operational carbon intensity value for the Proposed Development of 15.86 gCO_2e/kWh.

3.5.21. The Applicant therefore advises that comparing the Proposed Development against a gas-fired Combined Cycle Gas Turbine (CCGT) generating facility, currently the most carbon-efficient fossil-fuelled technology available, a representative figure for the carbon intensity of a CCGT is 354g CO_2e/kWh. The operational carbon intensity of the Proposed Development is therefore 95% lower than that of the counterfactual CCGT. Each kilowatt hour of electricity generated by the Proposed Development would emit 338 gCO_2e less than if it was generated by a gas fired CCGT generating facility, (See paragraphs 6.10.26 – 6.10.33 of Chapter 6 of the ES [APP-015].

3.5.22. Combining this figure with the estimated lifetime output from the Proposed Development indicates an overall lifetime carbon reduction, relative to the counterfactual CCGT, of over 9 million tonnes CO_2e.

3.5.23. The Applicant notes that its assessment does not include the battery energy storage system, which it advises would be able to supply 7,446,000 MWh to the electricity grid over its 60-year operational lifetime. As the operational carbon intensity of the Proposed Development is 0.016 tCO_2e/MWh and the comparable figure for an CCGT is 0.460 tCO_2e/MWh, the use of the BESS for grid balancing purposes would deliver a saving of 3.3 million tonnes CO_2e over its operational lifetime, see paragraphs 6.10.34-6.10.37 of Chapter 6 of the ES [APP-015]. Figures related to the battery storage element are inevitably subject to a degree of uncertainty according to the Applicant, but they illustrate the fact that the use of the battery system, when used for grid balancing purposes, is likely to result in significant additional carbon savings over its operational lifetime. These additional carbon savings from use of the BESS for grid balancing are not factored into the Applicants' overall GHG assessment.

3.5.24. The without project scenario has been assumed to be a gas-fired CCGT generating facility. The operational energy intensity allows isolated comparison of the emissions associated with operation of the Proposed Development compared to the alternative. The operational intensity of the Proposed Development is $16gCO_2e/kWh$, while the operational carbon intensity of a CCGT facility is $354gCO_2e/kWh$, showing substantial carbon savings.

3.5.25. The Applicant argues that as the GHG electricity generation intensity figure for the Proposed Development is anticipated to sit continually below the forecast grid average, GHG emissions savings are expected to be achieved throughout the lifetime of the Proposed Development compared to other fossil fuel energy generation types. Therefore, the GHG emissions during construction, operation, and decommissioning of

the Proposed Development can be considered to be 'offset' by the net positive impact of the Proposed Development on GHG emissions and the UK's ability to meet its carbon targets.

3.5.26. Furthermore, the Applicant contends that the GHG savings achieved throughout the lifetime of the Proposed Development demonstrate the role solar energy generation has to play in the transition to, and longer-term maintenance of, a low carbon economy. Without low-carbon energy generation projects such as the Proposed Development, the average grid GHG intensity will not decrease as is projected, which could adversely affect the UK's ability to meet its carbon reduction targets.

3.5.27. The Applicant therefore concludes that as the operational carbon intensity of the Proposed Development remains below the CCGT facility throughout its lifetime, it is considered that the overall GHG impact of the Proposed Development is beneficial and significant, as it will play a part in achieving the rate of transition required by nationally set policy commitments and supporting the trajectory towards net zero. The without-project baseline alternative of a CCGT facility would result in substantially higher GHG emissions. This Proposed Development demonstrates carbon savings, therefore it is beneficial and has a positive impact on climate.

3.5.28. In terms of cumulative effects, the Applicant's position is that it is not possible to define a study area for the assessment of cumulative effects of GHG emissions nor to undertake a cumulative effects assessment, as the identified receptor is the global climate and effects are therefore not geographically constrained. Consequently, as stated in the IEMA guidance, effects of GHG emissions from specific cumulative projects therefore in general should not be individually assessed, as there is no basis for selecting any particular (or more than one) cumulative project that has GHG emissions for assessment over any other.

Views of IPs

Host Authorities

3.5.29. WLDC in its LIR identified that whilst noting the positive benefits in the ES it also noted that the greatest GHG impacts occur during the construction phase and that it should be noted that some 435,753 tCO_2e will be emitted during the lifetime of the Proposed Development from the supply of replacement components and this contributes to 50% of the entire embodied carbon of the Proposed Development. They also raise concerns that the emissions in decommissioning could be much higher as the Applicant notes there is a high degree of uncertainty in their assessment in respect of decommissioning. This final point is reiterated in the SoCG between the Applicant and WLDC [REP6-012].

3.5.30. LCC confirms in its SoCG with the Applicant that there are no areas of disagreement [REP6-022].

3.5.31. Similarly, both BDC and NCC confirm in the SoCG with the Applicant that there are no areas of disagreement between them and the Applicant

regarding Climate Change impacts and GHG emissions in relation to the Proposed Development.

Other IPs

3.5.32. A significant number of individual respondents in their RRs and WRs raised concerns about the amount of embodied carbon associated with the Proposed Development. This was generally in the context of the manufacture and transportation of the PV panels from China and the amount of carbon this was likely to emit in generic terms. Concern was expressed that emissions could be substantially higher given China's coal burning power generation.

3.5.33. Comments were also made regarding the likely benefits associated with the energy that would be generated and decarbonisation that would result.

3.5.34. Concerns were expressed that the loss of agricultural land may result in the import and transportation of food thereby increasing carbon emissions.

3.5.35. 7000 Acres raised concerns with the detail provided on the assumptions to enable a robust assessment of the assumptions made. In its summary statement regarding matters not resolved during the examination [REP7-008] 7000 Acres note the Applicant has repeatedly failed to provide further information on how it reached its conclusions. It still has not provided a meaningful assessment of the GHG emissions generated during decommissioning. It has not taken account of the GHG emissions caused by importing the crops displaced by the Proposed Development. 7000 Acres also contend many of the assumptions made by the Applicant are highly optimistic and so not consistent with Advice Notice Nine, which requires a reasonable worse case assessment.

Examination

3.5.36. In my ExQ1 I asked a series of questions related to climate change, carbon assumptions and energy generation. These were responded to by the Applicant. The Applicant in its responses to RRs and WRs provided additional information around the assumptions and benchmarking it had used to support its carbon assessment.

3.5.37. At Issue Specific Hearing 3 (ISH3) session 2 [EV-008f and EV-008h] I explored matters related to the energy generation which underpins the carbon savings as well as matters related to the operation of the BESS.

3.5.38. In my ExQ3 I sought clarification on whether the assessments in the climate change chapter of the ES had accounted for crops used for the production of renewable energy and if so where this was identified. The Applicant responded [REP5-047] to the effect that the potential impact of foregone biofuel crop cultivation resulting from the Proposed Development has not been taken into account in the GHG assessment. PV modules are much more efficient than plants in converting sunlight to useable energy, and all objective studies indicate that the annual energy

yield per unit area is lower by orders of magnitude for biofuel crops than for photovoltaics, meaning that any area allocated for the cultivation of biofuels instead of PV modules would result in lower net GHG benefits.

3.5.39. Given that there were important and relevant matters contained in the updated dNPSs I issued a Regulation 17 request for further information to provide parties with an opportunity to comment on the updated policy position [PD-017]. The Applicant's amended position was provided in its update to its Planning Design and Access Statement [REP6-004 and REP6-006]. Other IPs responses were included with their Deadline 6 responses including for example 7000 Acres [REP6-053], Andy Johnson [REP6-055], Dorne Johnson [REP6-057]. These related to the November 2023 consultation drafts which were subsequently designated as the 2024 NPSs, without significant change.

Conclusions on Climate Change and GHG emissions.

3.5.40. The Applicant has applied an appropriate methodology and sought to contextualise the carbon emissions that would result from the Proposed Development in the context of relevant carbon budgets and against the whole life of the Proposed Development. The Applicant has used a counterfactual fossil fuel energy generation process to contrast the emissions that would be generated by the Proposed Development to demonstrate that to achieve a similar output of electricity as would be generated by the Proposed Development what the carbon emissions difference would be.

3.5.41. The Applicant concludes that the estimated lifetime output from the Proposed Development indicates an overall lifetime carbon reduction, relative to the counterfactual CCGT, of over 9 million tonnes CO_2e.

3.5.42. WLDC suggests that the embedded carbon in the construction phase and the significant elements of the operational replacement of panels should be identified as negative aspects and counted against the Proposed Development. The Applicant's view being that the assessment is undertaken on a whole life assessment and that the overall carbon savings incorporate these in the overall figure and that given the savings identified this is a substantial positive benefit of the Proposed Development. I am more persuaded by the Applicant's position. Whilst there are factors within the assumptions including related to the manufacture and transportation of PV panels as well as other elements of the Proposed Development which add to the carbon budget all of these are aggregated to arrive at an overall embedded carbon emissions for the Proposed Development and these are included in the Applicant's overall assessment. It is the whole life cycle of the Proposed Development that will be the final determinant as to how much carbon savings result and any embedded carbon and carbon emissions resultant from the Proposed Development are included in those final calculations.

3.5.43. 7000 Acres raised concerns that the Applicant had failed to give further evidence and detail of the basis for its assumptions. However, in its response to the RRs and WRs the Applicant did provide further details around some of the benchmarking. Moreover, Chapter 6 in the ES does

address the issue of the loss of agricultural land and comments on the likely impact of loss of productive land and transportation of food. The Applicant in response to my question at ExQ3 also gave further details of an assessment of a scenario whereby the land was put to the production of crops for use in the production of low carbon energy. This demonstrated that the Applicant's Proposed Development was substantially more efficient.

3.5.44. Whilst there remains some uncertainty around the final decommissioning aspect of the Proposed Development and how this may be affected, the Applicant considers there would be relatively low emissions but accepts there is great uncertainty. Even around that uncertainty these are orders of magnitude less against the carbon savings identified and this would not substantially change the overall conclusion that there is a substantial positive benefit.

3.5.45. The SoCGs with LCC, BDC and NCC all indicate that there are no outstanding matters between the Applicant and these parties in respect of the carbon assessment which it can therefore reasonably be concluded they accept.

3.5.46. I agree with the Applicant's conclusion in the ES that the Proposed Development would result in a positive benefit with the carbon savings demonstrated. In the context of the ES's significance table this means the project's net GHG impacts are below zero and it causes a reduction in atmospheric GHG concentration, whether directly or indirectly, compared to the without-project baseline. A project with beneficial effects substantially exceeds net zero requirements with a positive climate impact. I give this great weight in the overall balance.

3.6. HISTORIC ENVIRONMENT

INTRODUCTION

3.6.1. This Section considers the effects of the Proposed Development on the historic environment, having particular regard to any impacts on the significance of designated heritage assets. It takes account of the fact that there are no designated heritage assets within the Order limits and no direct physical impacts to any designated heritage assets have been identified. However, the Proposed Development has the potential to adversely affect the setting of a number of designated and non-designated heritage assets as well as non-designated below ground archaeology.

Policy Considerations

3.6.2. The Infrastructure Planning Decisions Regulations 2010 require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building or the setting of a scheduled monument.

National Policy Statements

3.6.3. Section 5.8 of 2011 NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result

in adverse impacts on the historic environment. Furthermore, it requires the Applicant to fully assess the significance of the heritage assets affected by a Proposed Development and ensure that the extent of the impact can be adequately understood from the application and supporting documents.

3.6.4. Paragraph 5.8.6 indicates that the SoS should also consider the impacts on non-designated heritage assets that have a heritage significance that merits consideration, even though those assets are of lesser value than designated heritage assets.

3.6.5. In terms of decision making, paragraphs 5.8.11 to 5.8.18 of 2011 NPS EN-1 advise that consideration should be given to the significance of any heritage assets and whether the Proposed Development would affect their significance, including effects on their setting. This includes, and where it has the potential to include, heritage assets with an archaeological interest, applicants should undertake a desk-based assessment and a field evaluation should follow where the exercise is insufficient to assess interest properly. Moreover, they indicate that there should be a presumption in favour of the conservation of designated heritage assets and that loss affecting any designated assets should require clear and convincing justification.

3.6.6. In determining the application, the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of the heritage assets, the contribution to their settings and the positive contribution they can make to sustainable communities and economic viability. Account should also be taken of the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment.

3.6.7. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.

3.6.8. When considering applications for development affecting the setting of a designated heritage asset, the SoS should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

3.6.9. Further advice can be found in 2011 NPS EN-5 in relation to the archaeological consequences of electricity line installation and the impacts of undergrounding.

3.6.10. These themes are continued into the 2024 NPS EN-1, 2024 NPS EN-3 and 2024 NPS EN-5 they also makes clear that the SoS should give considerable importance and weight to the desirability of preserving all designated heritage assets. Any harmful impact on the significance of a designated heritage asset should be given significant weight when weighed against the public benefit of development, recognising that the

greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.

3.6.11. They also make clear that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, they advise that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

3.6.12. 2024 NPS EN-1 expands the concept of CNP infrastructure and advises that the SoS will take as the starting point for decision making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances. It is further advised that this includes the test, amongst others listed in a non-inclusive list, where substantial harm to or loss of significance to heritage assets should be exceptional or wholly exceptional.

3.6.13. With the exception of the CNP, similar advice can be found in the NPPF, PPG and the development plan polices of the Host Authorities.

The Applicant's Case

3.6.14. Chapter 7 (Cultural Heritage) of the ES [APP-016] presents the Applicant's assessment and findings on the effects of the Proposed Development on cultural heritage. The assessment is supported by a number of appendices and figures attached to the ES, including but not limited to a cultural heritage desk-based assessment [APP-117], a gazetteer of known archaeological assets [APP-118] and an Archaeological Trial Trenching Fieldwork Report [APP-123].

3.6.15. An Archaeological Mitigation Strategy was also submitted, which was updated during the course of the Examination and the final version of which was in two parts [REP5-027 and REP5-029]. The Archaeological Trial Trenching Fieldwork Report was also updated dated during the Examination [REP5-011]. The updates to these documents took account of the additional land identified in the Change Request reporting on additional Trial Trenching and, taking account of the results, identifying additional mitigation.

3.6.16. The Applicant's assessment has been undertaken adopting the principles of the Rochdale Envelope as described and secured through the Outline Design Principles (ODP) [REP6-009]. These include matters related to heritage assets and identify heritage buffer zones where solar PV panels are excluded to protect the setting of heritage assets.

3.6.17. The assessment is based on a 3km study area for designated heritage assets around the Solar and Energy Storage Park. Where the GCC is located beyond the 3km, a 500m study area has been applied. The setting of designated heritage assets of the highest significance (scheduled monuments; Grade I and Grade II* listed buildings; and Registered Parks and Gardens) outside of these areas have been

considered up to 5km from the Solar and Energy Storage Park boundary. Non-designated heritage assets are considered within a 1km study area of the Solar and Energy Storage Park boundary and 500m for the GCC beyond this.

3.6.18. In terms of the existing baseline, the Applicant advises that there are no scheduled monuments, listed buildings or conservation areas within the overall site but there are a total of 31 non-designated heritage assets within the Solar and Energy Storage Park boundary and nine within the GCC.

3.6.19. Within the 3km study area there are six scheduled monuments and 65 listed buildings. Within the 500m study area for the GCC there is 1 scheduled monument and two listed buildings. Within the wider 5km study area there are nine scheduled monuments, six listed buildings and four conservation areas.

3.6.20. All the heritage assets are identified in paragraphs 7.7.3 to 7.7.19 of Chapter 7 in the ES. Impacts that potentially could arise relate to construction, operation and decommissioning and the Applicant identifies, in paragraphs 7.8.10 and 7.8.11, the designated and non-designated heritage assets where there is the potential for impact.

3.6.21. Design avoidance measures and mitigation measures that have been embedded into the Proposed Development are identified to avoid and reduce potential significant effects during construction and decommissioning. This includes the use of buffer zones and screening, secured through the works' packages in the rDCO and measures secured through the ODP [REP6-009]. Operational avoidance measures relate primarily to lighting to avoid impacts to the settings of heritage assets at night.

3.6.22. The Applicant's assessment notes that all designated heritage assets are located outside of the Order limits, therefore there would be no physical impacts to any designated heritage assets. Consequently, its assessment considers changes to the setting of designated heritage assets only.

3.6.23. The magnitude of impact through change to the setting of Segelocum Roman town, Roman fort south of Littleborough Lane, Medieval Bishops Palace, Stow Park, Heynings Priory (and associated assets), Fleet Plantation moated site scheduled monuments are assessed as very low for the lifespan of the Proposed Development, and on assets of high value, this would result in a minor adverse significance of effect for the lifespan of the Proposed development. These are not considered to be significant by the Applicant.

3.6.24. The Applicant considers in relation to the group of designated assets in Gate Burton non-designated parkland, which includes 7 listed buildings, that the magnitude of impact through change to the setting of the Grade II* listed Gate Burton Hall and the Grade II listed Church of St Helen, both of high value, is assessed as very low, for the lifespan of the Proposed Development, resulting in a minor adverse significance of

effect. This is not considered to be significant by the Applicant. The other designated assets of high value within the parkland would experience no change, resulting in a neutral significance of effect. This is not considered to be significant according to the Applicant. In respect of the non-designated designed parkland, which is of medium value, the magnitude of impact is assessed as low, during construction, resulting in a minor adverse significance of effect. This again is not considered to be significant by the Applicant.

3.6.25. The magnitude of impact through change to the setting of the former post-medieval park at Knaith, considered to be of low value, is assessed as no change since the changes within the wider estate would not alter the design intention of the remnant park and no visual changes would occur. This results in a neutral significance of effect. This is not considered to be significant by the Applicant. There is also no change identified to the setting of the former deer park which again is concluded not significant. The Applicant assesses the impact on the setting of the Grade II* Church of St Mary and the Grade II Knaith Hall as no change or very low respectively and is therefore not significant.

3.6.26. Three Grade II listed buildings of medium value in Willingham by Stow were scoped into assessment, the Applicant concludes that there is a very low magnitude of impact for the lifespan of the Proposed Development, as it would result in little change in the ability to understand and appreciate the heritage interests of the assets. On these assets of medium value, this results in a negligible significance of effect. This is not considered to be significant.

3.6.27. The Church of St Mary Grade I listed building in Stow and Benedictine Abbey and College Scheduled Monument with which it is associated is 1.5km from the site. The Applicant has assessed the magnitude of impact as very low, for the lifespan of the Proposed Development, as it would result in little change in the ability to understand and appreciate the heritage interests of the asset. On an asset of high value, this results in a minor adverse significance of effect. This according to the Applicant is not considered to be significant.

3.6.28. South Park Farmhouse Grade II listed building occupies part of the site of the former Heynings Priory Scheduled Monument. Embedded mitigation is provided in the form of a set-back panel-free zone to the south of the farmhouse. The Applicant considers that due to the sensitive placement of the Proposed Development, this would have little effect on the ability to understand the asset's heritage interests and the existing field boundaries would be retained. This is assessed by the Applicant as a very low magnitude of impact, for the lifespan of the Proposed Development, on an asset of medium value, resulting in a negligible significance of effect. This is not considered by the Applicant to be significant.

3.6.29. The Applicant reviews the effect on the previously identified non-designated heritage assets including buildings and buried remains or archaeological features and concludes that in ten instances the effect would be significant. These are identified in Table 7-5 of Chapter 7 of the

ES, which summarises the effects without additional mitigation. These being archaeological assets where the Applicant then proposes additional mitigation in the form of archaeological excavation and recording. It is stated (paragraph 7.10.135 of chapter 7 in the ES) that the additional mitigation measures have been agreed in principle in consultation with the Archaeological Advisors to LCC and NCC and are set out in the Archaeological Mitigation Strategy (AMS) [REP5-027 and REP5-029].

3.6.30. In terms of enhancement measures, the Applicant notes for cultural heritage this would include the retention of selected field boundaries, planted during the construction phase, that have historic precedent as indicated on relevant Enclosure, tithe and OS maps. These boundaries would enhance and reinstate elements of the historic landscape character such as the pattern of 19th century enclosures that were lost due to boundary removals in the 20th century.

3.6.31. The Applicant concludes that the magnitude of impact to archaeological assets as a result of the Proposed Development has been assessed as medium, resulting in a moderate adverse significance of effect, which in the absence of additional mitigation, would be significant. Additional mitigation in the form of a programme of archaeological excavation and recording is proposed, as set out in the Archaeological Mitigation Strategy [REP5-027 and REP5-029]. Archaeological excavation and recording would not minimise the physical impact to these assets, as the archaeological evidence would still be removed, but would compensate for their loss by preserving them by record. This would reduce the magnitude of impact on individual assets, resulting in a residual minor adverse effect, which the Applicant contends is not significant.

Views of IPs

Historic England (HE)

3.6.32. HE Relevant Representation [RR-100] notes the Proposed Development has addressed the setting of designated heritage assets and known monuments of equivalent importance through design (layout and deployment of green space) in particular at Heynings Priory Scheduled Monument and Gate Burton Hall (Grade II*). HE comments that with regards to buried archaeological remains it is important that risk of avoidable/ unmitigated damage to sensitive remains is well managed in proportion to their importance. This can be achieved through layout, deployment of green space and construction options for cabling and panel mounting. Archaeological risks can thus be well addressed with a sound understanding of where archaeological sensitivity and importance lies across the site and cable corridor. HE refers in the first instance to the expertise of local authority archaeological advisors as it is they who will (should DCO be granted with appropriate requirements) advise upon the acceptability of written schemes of investigation (WSI) and their accordance with a robust overall archaeological strategy secured through the DCO submission. HE also comments that combined cable connection corridors with other Solar NSIPs have the potential to minimise cumulative impacts in archaeologically sensitive areas, which it would welcome.

3.6.33. A final signed SoCG between the Applicant and HE [REP-011] was submitted by the Applicant. This records that there was extensive engagement between the parties and documents the advice and position provided at the time of the scoping opinion and the review of the Preliminary Environmental Impact Report. Overall, the SoCG confirms that HE has no objection to the Proposed Development as presented in the application. Previous issues raised by HE have been resolved through changes to the Proposed Development's design.

Host Authorities

3.6.34. WLDC in its LIR [REP-053] draws attention to the fact policy S57 of the CLLP 2023-2043 states that development should protect, conserve and seek opportunities to enhance the historic environment. Attention is drawn to the fact 63 known heritage assets have the potential to be affected through changes to their settings and the Applicant identifies those which would have a neutral impact and also the ten identified in the ES which would be negatively significantly affected during construction. WLDC further notes that Requirement 11 of the dDCO requires that the Proposed Development must be implemented in accordance with the Archaeological Mitigation Strategy AMS. WLDC notes the Proposed Development has been designed as far as practical to avoid or reduce effects on cultural heritage assets through the siting of the Proposed Development's components including panel-free heritage buffer zones. Whilst the AMS is considered a comprehensive document which aims to mitigate the impacts of the Proposed Development, WLDC notes that part 2 does not reference the proposed Cottam or West Burton solar schemes which would share the GCC.

3.6.35. LCC in its LIR [REP-043] notes that the archaeological evaluation work has been satisfactorily completed and the mitigation strategy is agreed, so the proposed requirement in the draft DCO for Archaeology would ensure the fieldwork, report and archive deposition are captured in the mitigation strategy. Therefore, there are no negative impacts identified in respect of archaeology and the requirements of Policy S57 LCCP 2023-2043 are not compromised by the Proposed Development. In the SoCG signed by the Applicant and LCC [REP6-022], LCC confirms there are no areas of disagreement with the Applicant regarding cultural heritage matters and that LCC are in agreement with the AMS.

3.6.36. NCC does not raise any issue in respect of cultural heritage in its LIR.

3.6.37. BDC in its LIR [REP-038] draws attention to policies DM4 and DM8 of the BCS 2011. BDC comment that in terms of the built heritage it is understood that there are no designated heritage assets within the cable route (in Bassetlaw) per se although it is within close proximity to Grade I and II Listed Buildings, non-designated heritage assets and a Scheduled Monument. It is also important to note that whilst the main bulk of the development is within the adjoining District, the scale of this is such that it does have the potential to impact on the setting of heritage assets that are within Bassetlaw District. BDC notes, an underground cable route would be very much preferred to an overhead one. Furthermore, it was confirmed at pre-application that an underground cable route through

Bassetlaw would not require any new associated structures such as substations, fencing or cabins, other than temporary ones during the construction phase. This is very much welcomed.

3.6.38. BDC also noted that in terms of archaeology the Council's Archaeological Advisor has been consulted and advises that the Applicant has undertaken sufficient evaluation to inform an appropriate mitigation strategy for this project. The mitigation strategy for archaeology on the cable route (running through Bassetlaw District) is presented in Part 2 of the submitted document Archaeological Mitigation Strategy [REP5-027 and REP5-029] and BDC confirmed that this is an acceptable approach and were happy to recommend agreement, subject to full implementation as detailed.

3.6.39. A joint SoCG was submitted between the Applicant and BDC and NCC. In this, both Councils agreed that there were no areas of disagreement with the Applicant in respect of the ES scope and methodology and the impacts identified. BDC also agreed that it had commented and were content with the Written Scheme of Investigation and trial trenching. Moreover, it also confirmed acceptance of the final AMS [REP5-027 and REP5-029]. Both NCC and BDC also, in respect of the changes resultant from the Change Request, agreed there are no areas of disagreement between the parties on the extent of investigation works, the findings or the changes to the AMS to reflect the (limited) findings.

Other IPs

3.6.40. A number of individual IPs object to the impacts of the Proposed Development on the area noting that there are many listed buildings and other historic assets in the area which would be affected. This included concerns in relation to archaeological assets and historic parkland. These include RRs from the Morris family [RR-177], 7000 Acres [RR-001] and individual responses including [RR-004, RR-061, RR-072, RR-073, RR-090, and RR-264].

Examination

3.6.41. In ExQ1 [PD-006] I sought clarification from HE and the Host Authorities if they were satisfied the Applicant has identified all relevant designated and non-designated heritage assets including any archaeological interests. I also sought views on whether the Archaeological surveys are sufficient?, and that the AMS fully secured the appropriate mitigation required to address the impacts of the Proposed Development. I also sought to clarify with the Applicant how the heritage setting buffers were to be secured as this was referenced to the indicative site layout.

3.6.42. In relation to the Heritage setting buffers the Applicant updated the ODP and included a parameters plan which included the Heritage setting buffers. In the various responses to my ExQ1 BDC [REP2-047] referred to NCC's comments but accepted that it was satisfied with all matters and the AMS had been suitably updated subject to some minor textual changes. NCC [REP2-053] again was satisfied with matters but indicated NCC should be formally consulted to work alongside the District Councils

and LCC. LCC's response [REP2-049] confirmed that it was satisfied with all matters subject to updating the roles and responsibilities of the County Archaeological advisers to clarify it is they who sign off matters in the AMS and WSI. WLDC responded to my ExQ1 in [REP2-057] and confirmed it was satisfied on all matters and had not identified any gaps and was satisfied with the control mechanisms.

3.6.43. At Deadline 3, the Applicant submitted a revised Archaeological Mitigation Strategy to provide further details regarding roles for Historic England and LCC's Archaeological Advisor and to make minor changes to respond to comments from host authorities and Historic England submitted at Deadline 2. The AMS was updated during the Examination to address the additional land included in the Change Request and to take account of the Proposed Development being brought closer to the Fleet Plantation Moated Site Scheduled Monument. The final AMS can be found at [REP5-027 and REP5-029] which was updated to include the results of trial trenching [REP5-011] (which was also updated) within land accepted as part of the recent Change Request, as well as additional mitigation in the form of a 20m buffer zone to the Fleet Plantation Moated Site scheduled monument to the south of the extended Order limits in response to comments from HE.

3.6.44. I sought clarification from NCC, BDC and HE in my ExQ3 [PD-013] that they were satisfied that the updated AMS was acceptable. NCC [REP5-054] has advised that the range of mitigation processes proposed appears generally fit for purpose. Furthermore, that the updated AMS covers monitoring of work, with the opportunity to increase archaeological involvement if uncovered remains so indicate. The success of this approach will depend very much on County curatorial concerns being properly considered in a timely fashion. While LCC currently provides curatorial advice for BDC, NCC remains the overall curator for the County of Nottinghamshire's archaeology and should therefore be included in relevant consultations going forward.

3.6.45. In relation to the dDCO, which I deal with in greater detail in Section 7 below, I asked a question in ExQ1 [PD-006] around Requirement 11 which seeks to secure the implementation of the AMS. BDC and NCC confirm the requirement safeguards archaeological interests and LCC suggested textual changes to include reference to agreement with LCC and HE.

Conclusions on Cultural Heritage

3.6.46. There are no designated heritage assets located within the Order limits,. There is therefore no direct impact on such assets. The effects would therefore be limited to the effects on setting and the contribution it makes to the asset's significance.

3.6.47. In the context of the designated heritage assets identified and assessed by the Applicant, the rural landscape in the immediate setting of the assets would generally remain unchanged and, combined with the lack of intervisibility between the assets and the Proposed Development, there

would be no real change in the ability to understand and appreciate the heritage interests of the assets.

3.6.48. The introduction of heritage buffer zones where panels would be excluded, as secured through the ODP, are embedded mitigation which would protect the setting of close by assets and reduce any effects on the ability to appreciate the assets and the contribution the setting makes to their significance. In particular, the heritage buffer zones would particularly safeguard Heynings Priory Scheduled Monument, the group of designated heritage assets in Gate Burton Parkland and south park farmhouse. The 20m buffer zone secured through the AMS in relation to Fleet Plantation moated site scheduled monument would also assist in mitigating any impact from works in respect of the grid connection.

3.6.49. In terms of the non-designated heritage assets, including below ground remains the ES does identify some 10 assets where there would be a moderate adverse significance of effect. Additional mitigation is identified to address this through archaeological excavation and recording. This would be controlled through WSI secured through the AMS.

3.6.50. HE and the relevant Host Authorities have confirmed that there are no areas of dispute with the Applicant in respect of the assessment and conclusions of the ES. The AMS has been updated during the Examination and addressed issues raised by the Host Authorities to ensure appropriate engagement with the relevant Councils. There are no significant areas where there are substantial areas of dispute regarding the overall effects on heritage assets such that need to be resolved. There are concerns expressed by IPs, but these are predominantly in generic terms and identifying that there are numerous historic buildings and assets in the locality which would be affected by changes to the area resultant from the size, scale and visibility of the Proposed Development.

3.6.51. Overall, the detailed assessment of the effects and impacts on individual assets is accepted and arrives at appropriate conclusions and are not the subject of challenge by HE or Host Authorities. I therefore accept the conclusions reached.

3.6.52. Taking the above matters into account, I consider the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that the extent of the likely impact can be understood. In my view, the application meets the requirements of 2011 NPS EN-1, 2024 NPS EN-1, the NPPF, PPG and local development plan policy in that regard.

3.6.53. Furthermore, I am satisfied that, with the mitigation measures secured including the additional mitigation, the Proposed Development would not result in significant adverse effects to any of the designated heritage assets identified.

3.6.54. Nevertheless, notwithstanding the mitigation measures proposed and a lack of significant effects to designated heritage assets, the policy position refers to harm to heritage assets. Albeit the ES concludes a very

low impact with a minor adverse significance of effect which is not significant to designated assets it does identify minor adverse significance of effects to which it attributes an overall conclusion as not significant. The Proposed Development would therefore result in some harm to the significance of a number of designated heritage assets. These include: Segelocum Roman town, Roman fort south of Littleborough Lane, Medieval Bishops Palace, Stow Park, Heynings Priory scheduled monument, Fleet Plantation moated site, The group of designated assets in Gate Burton non-designated parkland, Church of St Mary Grade I listed building in Stow and Benedictine Abbey and College scheduled monument. In relation to non-designated heritage assets, archaeological assets, it also identifies moderate adverse effects albeit this is mitigated. Both individually and cumulatively I am satisfied that the harms identified would be less than substantial.

3.6.55. The NPSs, the NPPF and relevant development plan policies make clear that great weight is to be given to the conservation of historic assets and any harm to, or loss of, significance of a designated heritage asset should require clear and convincing justification.

3.6.56. Both the 2011 NPS, the 2024 NPS and the NPPF give a clear indication that loss affecting any designated heritage asset should require clear and convincing justification and when considering applications for development affecting the setting of a designated heritage asset, the SoS should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

3.6.57. 2024 NPS EN-1 also indicates that for non-designated assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset itself.

3.6.58. In the context of this section, I consider that whilst there would be some harm to a number of designated heritage assets and of non-designated archaeological assets, and afford these harms great weight, it would be mitigated by embedded mitigation and additional mitigation measures. Where residual harm remains for the archaeological assets where there would be a degree of mitigation through the recording that is detailed in the WSI.

3.6.59. I afford any harm to heritage assets great weight, but this is to be balanced against the benefits of the Proposed Development according to the scale of the harm and the nature of the asset, this balancing is undertaken in Chapter 5 of this Report.

3.7. HUMAN HEALTH AND WELLBEING

INTRODUCTION

3.7.1. This sub-section considers the effect of the Proposed Development on human health and wellbeing. The Applicant's assessment scopes out

effects from EMF, but this was a matter that was questioned during the Examination, and I report on those matters in this Section.

Policy Considerations

National Policy Statements

3.7.2. Paragraph 4.13.1 of 2011 NPS EN-1 advises that energy production has the potential to impact on the health and wellbeing of the population. Paragraphs 4.13.1 to 4.13.5 advise that the direct impacts on health can include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. Moreover, it is advised that new energy infrastructure may also affect the composition, size and proximity of the local population and in doing so have indirect health effects. It is also noted that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation which will constitute effective mitigation of them.

3.7.3. This advice is generally carried forward in 2024 NPS EN-1.

3.7.4. 2011 NPS EN-5 contains guidance on the assessment of the effects of EMFs with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). This advice is similarly carried forward into 2024 NPS EN-5.

National Planning Policy Framework (NPPF)

3.7.5. Section 8 of the NPPF deals with promoting healthy and safe communities advising planning policies and decisions should aim to achieve healthy, inclusive and safe places. A number of references in the NPPF refer to the promotion of health and wellbeing.

Local Development Plan Policies

3.7.6. Local Policies seek to ensure that health and wellbeing outcomes are taken into account and applicants should seek to demonstrate how these will be addressed and mitigated. Local policies also make reference to affects from noise, air quality, traffic and transport, use of Public Rights of Way (PRoWs) etc which potentially affect health and wellbeing.

The Applicant's Case

3.7.7. Chapter 14 of the ES [APP-023] presents the findings of the Applicant's assessment of likely significant effects on Human Health and Wellbeing as a result of the Proposed Development. It relies on and includes/ presents a summary of the information on health and wellbeing provided in ES Volume 1, Chapter 11: Noise and Vibration [APP-020], Chapter 12: Socio-economics and Land Use [APP-021], Chapter 13: Transport and Access [APP-022] and Chapter 15: Other Environmental Topics (including Air Quality) [APP-024].

3.7.8. A study area of five wards across Bassetlaw and West Lindsey districts is identified. The Applicant notes that there is no consolidated methodology or practice for the assessment of effects on human health. Best practice principles are provided in NHS England's Healthy Urban Development Unit's (HUDU) Rapid Health Impact Assessment (HIA) Toolkit 2019. In addition, consideration has been given to the Health and Wellbeing checklist of the Wales Health Impact Assessment Support Unit (WHIASU) (2020). The Applicant states there is no published definition of significance for health effects, the description of the changes to health determinants, the characteristics and sensitivity of the receptor population, and the likelihood of negative or positive health effects has been undertaken in accordance with HUDU and WHIASU guidance.

3.7.9. An existing baseline position is identified having regard to ES Chapter 12 on socio economics and land use and a human health profile of the population using data from Public Health England. The Applicant sets out that the Proposed Development has the potential to affect human health and wellbeing (positively or negatively), during construction, operation and during decommissioning, in various ways including: Access to Healthcare Services and Other Social Infrastructure; Air Quality, Noise and Neighbourhood Amenity; Accessibility and Active Travel; Access to Work and Training; and Social Cohesion and Lifetime Neighbourhoods.

3.7.10. The Applicant further advises that the impact of EMF generated by the cable route on local receptors has been considered but scoped out given that only 400kV cable circuit will run underground. Whilst it is recognised that underground cables eliminate electric fields but still produce magnetic fields, it is unlikely that cables will be installed close to any residential or commercial properties due to difficulties with access. It is assumed that cables will be at least 10 metres away from any property. The EMF reduces rapidly with distance, and a maximum 4% of the permitted levels at 5 metres will be experienced. Some Public Right of Ways do cross the proposed cable route, although the users would be transient and present for short periods of time. For individuals exposed to EMF for short periods of time, the exposure is similar to that associated with general household appliances.

3.7.11. Embedded mitigation measures are incorporated and secured into the Proposed Development as set out in the respective chapters to reduce other construction, operational and decommissioning effects.

3.7.12. Tables 14-5 to 14-9 in Chapter 14 of the ES set out the Applicant's assessment and conclusions in respect of the effects and impacts of the Proposed Development in relation to the determinants identified in the methodology.

3.7.13. In terms of 'Access to healthcare services and other social infrastructure' the Applicant summarises the effects as being unlikely that there would be any severance between local residents and the healthcare facilities or other social infrastructure which they use during the construction, operation or decommissioning phase. This is because neither the additional construction/decommissioning traffic flow nor the traffic flow

generated during the operational phase will exceed the future baseline traffic flows (without the Scheme). No road closures are anticipated at any point during the Proposed Development. It is therefore concluded there would be a neutral effect during construction operation and decommissioning.

3.7.14. With regard to 'Air quality, noise and neighbourhood amenity' the Applicant concludes that the implementation of mitigation is expected to prevent the occurrence of significant impacts arising from dust generation during the construction phase, however, there are assessed to be negative impacts on some residents during the construction phase as a result of traffic noise in some locations (Marton Road, B1241 High Street and Headstead Bank). Noise and Vibration levels may also exceed LOAEL levels in some locations during the construction and decommissioning phase. During the operational phase, due to the low levels of employment and selection of and location of plant, there is anticipated to be minimal implications on air quality, noise and neighbourhood amenity. It is therefore concluded there would be a negative effect during construction and decommissioning and neutral effect during operation.

3.7.15. In relation to 'Accessibility and active travel' it is concluded that all existing PRoWs will be retained during the construction phase with no PRoW closures. However, there may be a limited number of temporary diversions around the GCC during cabling installation. This is projected to be similar during the decommissioning phase. As there are no permanent closures during the construction phase, these links will not need to be reopened during the operational phase. Overall, there would be a negative effect during construction and decommissioning and a neutral effect during operation.

3.7.16. Turning to 'Access to work and training' the Applicant predicts the construction phase of the Proposed Development will support 363 net jobs per annum, with 207 per annum being taken up by residents within 60 minutes of the site. The decommissioning phase is expected to support the same number of jobs and local jobs as the construction phase. During these periods, the Proposed Development is therefore expected to lead to a positive health and wellbeing impact on access to work and training. As set out in the Outline Skills Supply Chain and Employment Plan (OSSCEP) [APP-228], the Applicant will be encouraged to provide a range of apprenticeships, training placements and deliver an education programme centred around Science Technology Engineering and mathematics (STEM) and careers-based topics. Part of the Procurement Strategy will also encourage partnership working with local partners (such as Chambers of Commerce) to organise and hold 'meet the buyer' events for the local supply chain. During the operation phase, the Proposed Development is assessed to have a positive impact as there is assessed to be the provision of 14 jobs as a result of the Proposed Development. On this basis the Applicant ascribes a positive effect during construction and decommissioning and a neutral effect during operation.

3.7.17. Finally, in terms of 'Social cohesion and lifetime neighbourhoods' as a result of the construction of the Proposed Development, the Applicant notes nine PRoW routes may be temporarily diverted, however, this is not anticipated to result in severance of communities. The impact on the existing community will also be limited as far as possible through provision of a minibus service to transfer construction workers to and from the site and development of a local communications strategy to address any issues and relay information. The Proposed Development is therefore expected to result in a neutral health and wellbeing impact during construction operation and decommissioning.

3.7.18. In terms of cumulative effects taking the Proposed Development in association with West Burton and Cottam could create a peak of 1,886 workers, which could have implications on access to healthcare services. Currently, the GP:Patient ratio is 1:1,880, which is also broadly the recommended ratio set by the Royal College of General Practitioners (1:1,800). However, it is assumed that West Burton 2 and 3 together will have a peak construction workforce of 654 FTE and Cottam 1 will have a peak construction workforce of 832 FTE, in addition to the 363 FTE from Gate Burton. Taking into account these other developments, this could as a worst-case scenario, potentially increase this ratio to 1:1905 which greatly exceeds the recommended ratio as set by the Royal College of General Practitioners.

3.7.19. The Applicant expects the overall cumulative effect on PRoWs during construction and decommissioning to have the potential to have a greater effect, due to the cumulative scheme of West Burton Solar Park adjacent to the Proposed Development. If constructed, West Burton 3 could intersect LL|Mton|68/1 (footpath- c.700m), south of the site, on the north border of the GCC, connecting the High Street to Stow Park Road. No other PRoW affected by West Burton or Cottam Solar Projects intersect the Order limits of the Proposed Development. It is therefore expected that the effect will remain temporary minor adverse, and is not considered significant.

3.7.20. West Burton Solar Project and Cottam Solar Project (both located within 5km of the Order limits) expect to commence construction in Q1 2024 until Q4 2025. This would create an overlap in construction with the Proposed Development for approximately 12 months in 2025. Despite this increase in employment opportunities, as this is anticipated to be in the construction and decommissioning phase, the overall cumulative effect is assessed to remain at temporary minor beneficial effect (not significant).

3.7.21. The Proposed Development, the West Burton and Cottam solar projects will seek to prepare a joint CEMP in order to manage construction traffic and another air quality assessment may need to be produced. Other schemes are not likely to contribute to the effects on air quality receptors identified in this chapter and therefore are not significant.

3.7.22. Cumulative noise effects during construction and operation phases may occur if developments are located near to a common receptor. However,

based on professional judgement, at distances of greater than 500m, any interaction of noise emissions from multiple developments would be attenuated and so normally no combined effects are predicted. The precise scale of noise effects will depend on works taking place at any one time, however, mitigation measures presented in the fCEMP [REP5-023] and fDEMP [REP2-025] seek to minimise this as far as possible. It is also assumed that the other developments will be required to adopt standard working practices and noise and vibration levels will comply with set limits. Based on the distance and industry requirements, it is not considered that any in-combination cumulative effects at common noise-sensitive receptors would occur. This is also anticipated to be the case during the operational phase.

Views of IPs

UK Health Security Agency

3.7.23. In its RR [RR-280] the UKHSA commented that it acknowledges the ES has not identified any issues which could significantly affect public health. It raised two points. 1) UKHSA/OHID have previously raised concerns regarding the use of the HUDU/ WHIASU methodology within the Population and Human Health chapter, as it doesn't include an assessment of significance for those elements scoped in and as required under the EIA Regulations. Upon review of the results of the applicant's assessment, we recognise that in this instance any additional assessment of significance is unlikely to significantly alter the findings. 2) In terms of Electromagnetic Fields (EMF), UKHSA requested at the Section 42 stage, that justification should be provided within the ES to demonstrate that the potential for health impacts from EMF would not be significant. Though this has been included in the ES (Chapter 14.8.2), it remains unclear how the judgement was reached. The usual requirement for 400 kV cables is to provide a calculation or measurement of the maximum fields directly above the cable. More information is available in "Power Lines: Demonstrating compliance with EMF public exposure guidelines A voluntary Code of Practice". The UKHSA stated "*Following our review of the submitted documentation we are satisfied that the proposed development should not result in any significant adverse impact on public health. However, it still remains unclear how the judgement on the health impacts of EMF was reached.*"

3.7.24. Following further information provided by the Applicant to the UKHSA [REP4-001] they commented that Gate Burton Energy Park Limited has carried out appropriate methodology and calculations to assess that the cable will comply with the recommended EMF exposure guidelines, as set out in the applicable code of practice "Power Lines: Demonstrating compliance with EMF public exposure guidelines A voluntary Code of Practice"

Host Authorities

3.7.25. WLDC in its LIR [REP-053] notes that the ES in terms of construction and decommissioning identifies there would be positive impacts on health and wellbeing from the proposed Outline Skills Supply Chain and Employment

Plan (OSSCEP), there would be neutral impacts as it is unlikely that there will be any severance between local residents and the healthcare facilities or other social infrastructure which they use during the construction, operation or decommissioning phase.

3.7.26. WLDC highlights that the ES states that during both construction and decommissioning the impact on Human Health and Wellbeing is assessed as negative. Moreover, it notes as a result of the construction of the Proposed Development, nine PRoW routes may be temporarily diverted, however, this is not anticipated to result in severance of communities. The impact on the existing community will also be limited as far as possible through provision of a minibus service to transfer construction workers to and from site and development of a local communications strategy to address any issues and relay information.

3.7.27. Further negative impacts identified in the ES are noted including assuming a worst-case whereby all of the 156 construction workers who do not live locally require places at surgeries within the wider PCN areas (in IMP PCN and Trent Care PCN) where there is more accommodation available. This would increase the patients per GP provision across both geographies from 1,887 patients per GP to 1,889 patients per GP, which although slightly exceeding the recommended ratio set by the Royal College of General Practitioners, does not worsen the current situation to a large extent.

3.7.28. WLDC also points to the ES concluding that the implementation of mitigation is expected to prevent the occurrence of significant impacts arising from dust generation during the construction phase. However, there are assessed to be negative impacts on some residents during the construction phase as a result of traffic noise in some locations (Marton Road, B1241 High Street and Headstead Bank). Noise and Vibration levels may also exceed LOAEL in some locations during the construction and decommissioning phase. During the operational phase, due to the low levels of employment and selection of and location of plant, there is anticipated to be minimal implications on air quality, noise and neighbourhood amenity.

3.7.29. In terms of the cumulative effects WLDC highlights the construction of Cottam, Gate Burton and West Burton could create a peak of 1,886 workers, which could have implications on access to healthcare services. Currently, the GP to Patient ratio is 1:1,880, which is also the recommended ratio set by the Royal College of General Practitioners (1:1,800). However, it is assumed that West Burton 2 and 3 together will have a peak construction workforce of 654 FTE and Cottam 1 will have a peak construction workforce of 832 FTE, in addition to the 363 FTE from Gate Burton. Taking into account these other developments, this could as a worst-case scenario, potentially increase this ratio to 1:1905 which greatly exceeds the recommended ratio as set by the Royal College of General Practitioners. WLDC also identify the potential for an effect on the PRoW.

3.7.30. LCC in its LIR [REP-043] highlights policy S54 CLLP 2023-2043 which relates to health and wellbeing and seeks to ensure that where any potential adverse health impacts are identified the developer will be expected to demonstrate how these will be addressed and mitigated. At this time a neutral response in respect of the requirements of Policy S54 health, wellbeing and pollution is identified which will be reviewed. They raise the issue of a battery fire, but this is dealt with under the section on major accidents and disasters later in this Report.

3.7.31. NCC in its LIR [REP-045] draws attention to policy SO3 of the Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy (2013) on community wellbeing which seeks to protect local amenity and quality of life from the possible impacts of waste management such as dust, traffic, noise, odour, visual impact etc. and address local health concerns.

3.7.32. BDC in its LIR [REP-038] draws attention to policies DM4, and DM10 of the BCS 2011 which amongst other matters seek to protect amenity and any issues identified with regard to impacts on matters such as noise.

Other IPs

3.7.33. A significant number of the RRs included reference to health and wellbeing. This included references to the mental health of residents due to the impact of significant areas of solar PV panels reducing the enjoyment of access to the countryside and including the cumulative effects associated with the accumulation of solar equipment with the other solar schemes in the area. In the majority of representations these concerns were expressed as a general non-specific issue. Concerns were also expressed about the health impacts arising from the other effects of the Proposed Development in terms of noise, dust, traffic etc.

3.7.34. A number of further representations were submitted during the course of the Examination, including as summaries of oral representations following ISH3, which continued to raise concerns around the general issue of the effects on health and mental health including for example [REP-067, REP3-100, REP3-078, REP3-034, REP3-074, REP5-064, REP5-067, REP5-072, REP5-078].

3.7.35. 7000 Acres made a number of submissions which included or addressed references to health issues in particular Written Representation [REP2-075] raising concerns with the adequacy of the Applicant's assessment and its understanding of the inequalities and levels of deprivation in the area. They also raised health in Deadline 4 [REP4-065] and 5 [REP5-063] submissions and reiterated their concerns with the adequacy of the Applicant's assessment in their final statement at Deadline 7 [REP7-008].

3.7.36. Mr Roy Clegg raised an issue with regard to Electromagnetic fields on marine life, flora, fauna and biodiversity eg [REP-089], however, this was not in relation to human health and so I address those matters in the Biodiversity, Ecology and Natural Environment sub section above or the HRA section below in this Report.

Examination

3.7.37. During the Examination matters related to health and wellbeing issues were raised on a number of occasions when I sought clarification on assessments or conclusions reached by the Applicant or concerns expressed by IPs.

3.7.38. At ExQ1 [PD-006] I asked a series of questions including 1.8.3 through to 1.8.5 about how the Applicant had taken on board mental health impacts, the extent of the study area and on EMF. At ExQ1 1.8.8 I also questioned the Patient Ratio outcomes and whether any additional mitigation should be applied.

3.7.39. In response, the Applicant confirmed [REP2-041] that it is recognised the Proposed Development has the potential to affect human health in various ways and that there are embedded mitigation measures incorporated and secured to reduce construction, operation and decommissioning effects which in turn would mitigate the effects on human health and wellbeing. These are secured through the fCEMP [REP5-023], fOEMP [REP2-035] and fDEMP [REP5-025]. In effect the Applicant suggests that through the management plans the PRoW would remain open or disruption would be limited such that this would retain the benefits of active travel, that construction traffic would be managed so would reduce anxiety for users of the road network, siting and planting (including advanced planting) would reduce visual impacts and thereby reduce visual intrusion, there would be an effective communications strategy such that local residents would be made aware of activities and thereby reduce anxiety.

3.7.40. At ExQ2 [PD-009] I sought clarification from WLDC on what mental health issues it was concerned with and the effects of the Proposed Development that gave rise to them. I also sought further clarification from UKHSA on comments around EMF. These matters were also raised in ISH3 where I requested the Applicant engage with UKHSA to provide me with a clear position on the effects of EMF on human health.

3.7.41. WLDC [REP4-059] amongst other matters clarified that the concerns around mental health and wellbeing focused on the landscape and visual effects given the local communities' strong connection with the agricultural culture of the area and construction activity given the communities are particularly dependent upon the use of adopted highways for recreation and leisure purposes. Cumulative effects would compound issues and are of particular concern in these areas as the proliferation of construction traffic for five years or more would discourage the use of rural highways for recreation use, resulting in a further negative impact upon the wellbeing and mental health of local residents and people using the district for leisure purposes. The adverse impacts on the landscape from cumulative effects will affect the way local residents relate to the area that they live in.

3.7.42. In respect of EMF the Applicant in its cover letter to Deadline 4 [REP4-001] clarified that a technical report that addressed UKHSA's queries raised was submitted to the UKHSA on 13 September 2023 (a copy was

attached to their letter as Appendix A). The Applicant further confirmed that the additional details have allowed the UKHSA to agree that the Applicant has carried out appropriate methodology and calculations to assess that the cable will comply with the recommended EMF exposure guidelines, as set out in the applicable code of practice 'Power Lines: Demonstrating compliance with EMF public exposure guidelines A voluntary Code of Practice'. This confirmation is also provided in Appendix A to their cover letter.

3.7.43. At ExQ3 [PD-013] following submissions from various IPs, including 7000 Acres as referred to above, I sought further clarification from the Applicant on its assessment of human health methodology, the extent of the study area and other wards, and the use of buffer zones. The Applicant responded at [REP5-047] confirming its position that it had carried out an appropriate health impact assessment, that the use of the HUDU model in association with WHIASU supported a robust assessment along with the approach they adopted and that it was consistent with the approaches adopted in NCC's Spatial Planning and Health Framework amongst other documents in the locality. The Applicant also noted that no one objected to the general approach in the Scoping responses, and they were satisfied that they had undertaken their assessment following the advice in the scoping responses. In terms of the study area this was identified on the basis of those areas that would be directly affected but the health assessment draws on other assessments in the ES and thereby does take on board effects over a wider area.

Conclusions on Human Health and Wellbeing.

3.7.44. Energy production has the potential to impact on the health and wellbeing of the population with the direct impacts on health potentially including increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. In relation to the Proposed Development those impacts where affects may arise relate to traffic, air pollution through construction activities and dust and noise. WLDC has also identified the landscape and visual effects affecting the mental wellbeing of local residents due to their connection with the local area.

3.7.45. Matters related to air quality, traffic, noise including in the context of construction, operation and decommissioning are dealt with in terms of individual Sections of this Report and those conclusions are used to form the basis of the conclusions here. The assessment is not repeated.

3.7.46. The Applicant's assessment of health effects assesses the effects of the Proposed Development on Access to Healthcare Services and Other Social Infrastructure; Air Quality, Noise and Neighbourhood Amenity; Accessibility and Active Travel; Access to Work and Training; and Social Cohesion and Lifetime Neighbourhoods.

3.7.47. Concerns were expressed by a number of IPs in relation to the overall effect on health and wellbeing with many referencing the adverse effects that development of this scale, and in association with other large scale solar schemes would have on the mental health of residents. 7000 Acres

wase particularly concerned about the assessment methodology and data used by the Applicant suggesting that more recent data and engagement with other local bodies would have provided for a more accurate understanding of baseline conditions and of the health indicators that may be affected.

3.7.48. The Applicant has noted that there is no consolidated methodology or practice for the assessment of effects on human health. It has adopted an approach based on HUDU and WHIASU. They suggest that this is consistent with responses to the scoping opinion. I have no direct evidence from the Host Authorities or Health Authorities that this is inherently a wrong approach. The Applicant points to a number of documents in the Host Authority areas which rely on similar assessment models when advising on how health impacts should be addressed. I note the UKHSA comments that UKHSA/OHID have previously raised concerns regarding the use of the HUDU/ WHIASU methodology within the Population and Human Health chapter, as it does not include an assessment of significance for those elements scoped in, as required under the EIA Regulations. However, they go on to state upon review of the results of the applicant's assessment, it recognises that in this instance any additional assessment of significance is unlikely to significantly alter the findings.

3.7.49. I am also aware that the Applicant points to a number of recently granted Development Consent Orders where a similar assessment has been undertaken, including Longfield Solar Farm and East Anglia ONE North Offshore Wind Farm. The Applicant's assessment relies upon the stated approaches but then takes account of conclusions reached in the other chapters of the ES and makes conclusions based on other factors related to health indices. I am therefore satisfied that the assessment undertaken does address the likely significant effects that would arise in relation to human health and wellbeing.

3.7.50. In terms of access to GPs, the GP ratio identified by the Applicant increases from a baseline of 1,800 patients per GP to 1,905 per GP once the Proposed Development and the cumulative schemes are taken into account. This assessment represented a very worst-case whereby the peak construction months for all schemes would coincide. The Applicant seeks to then suggest this would in real terms not realise in the vast majority of the construction period due to factors such as home working, worker numbers would be at or below the average forecast or construction may overlap but not be completely coincidental. However, the ES seeks to establish a worst-case scenario and this should be the basis of the consideration.

3.7.51. The Applicant proposes no additional mitigation and also suggests that as the workforce would have a working age profile and be reasonably healthy so likely not to require access to health facilities at the same rate as the population. Whilst this may have some degree of logic the assessment demonstrates that there could be an increase above the GP ratio that currently exists and that this would be above the recommended ratio set by the Royal College of General Practitioners.

This is a negative effect of the Proposed Development and when considered cumulatively. I recognise that this would be a temporary effect during construction, and potentially decommissioning, where higher numbers of workers would be employed and I accept that some of the work force may be resident in the area and others may commute and some travel and stay. I therefore assess that this harm would amount to a moderate adverse effect in the overall balance.

3.7.52. In the context of air quality, noise and neighbourhood amenity these matters are dealt with elsewhere in this Report and should not therefore be double counted. There are minor adverse effects identified in terms of noise, but these are concluded to be acceptable within the NPSE.

3.7.53. The Applicant points to the fact that no PRoWs are proposed to be closed as a result of the Proposed Development, where there are diversions or construction issues these would be for minor durations and short distances. The Applicant therefore concludes that active travel would not be disrupted and people's access to the countryside and PRoW network would be maintained and managed through the Outline PRoW Management Plan [CR1-034]. WLDC raises concerns that the additional construction traffic, in particular in association with the cumulative effects with other solar schemes in the area would discourage the active use of the road network for recreation purposes. The Applicant's traffic assessments and cumulative effects of construction traffic have been considered elsewhere in this Report and this demonstrates that the additional construction traffic would not lead to significant hazards or significant additional volumes of traffic. Whilst WLDC has identified potential issues and raise concerns regarding cumulative construction traffic they do not substantiate the basis of those concerns with their own identification of the likely increased vehicle numbers or types. Overall, I am satisfied that the Proposed Development would have a limited direct impact on the highway network such that it would not impede or restrict access to the network and people would still be able to participate in recreational access to the countryside. General traffic levels and construction traffic in particular would be managed and in association with the proposed communication strategy I am satisfied that the effects that may reduce use of the local highway network would be limited. This would therefore not significantly affect accessibility or active travel or reduce social cohesion.

3.7.54. WLDC includes within its concerns the effect of the changes to the wider landscape and the connectivity that this creates for residents, however, I address issues related to the landscape and visual effects of the development in the Landscape and Visual section elsewhere in this Report.

3.7.55. Access to work and training is addressed through the socio-economic section and there are positive benefits associated with the Proposed Development. However, to avoid double counting that is addressed through the socio-economic subsection elsewhere in this Report.

3.7.56. Moving to EMF effects I focus here on the effects of EMF in relation to human health. I am aware that submissions have been made in relation to the effects of EMF on fish, but this is addressed in the Biodiversity, Ecology and Natural Environment Section.

3.7.57. NPS EN-5 (both 2011 and 2024) contain guidance on the assessment of the effects of EMFs with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In its Relevant Representation [RR-280] UKHSA raised concerns that the Applicant had not demonstrated the effectiveness of its proposed mitigation to reduce EMF impacts and had not provided sufficient evidence to conclude that it should be scoped out of assessment. Following questions at ExQ2 and in ISH3 I suggested the Applicant engage with UKHSA to provide a considered response. The Applicant produced a paper to support its proposition on the buried cable and distance to and nature of sensitive receptors. UKHSA upon reviewing the additional information was satisfied that the Applicant had carried out appropriate methodology and calculations to assess that the cable will comply with the recommended EMF exposure guidelines, as set out in the applicable code of practice 'Power Lines: Demonstrating compliance with EMF public exposure guidelines A voluntary Code of Practice'. The ODP [REP6-008] secures a minimum depth for the buried cable of 0.9m and a minimum separation distance of 10m from any residential receptor which is consistent with the approach and methodology which the UKHSA accepted and these parameters are secured via the ODP through the rDCO.

3.7.58. Given these conclusions I am satisfied that there would be no significant effect on human health resultant from EMF and this is consistent with NPS EN-5.

3.7.59. Overall, in terms of human health and wellbeing, I conclude that there are adverse effects resultant from a significant increase in the GP ratio in the area. This, however, would be for a limited period during construction, and potentially decommissioning. The overall effect may be moderated by working from home practices, the age profile of the work force and dependant on the cumulative effects dependant on the degree of overlap with the construction periods of the other solar schemes in the area. Overall, I therefore conclude this is a moderate adverse health impact to weigh in the overall balance, having regard to the Proposed Development and cumulatively. I am satisfied that with the operation of the various management plans the maintenance of access to the PRoW and fCTMP that any adverse effects on accessibility, isolation or preclusion for access to health benefits from accessing the countryside would be limited and mitigated and as such would not weigh negatively in the balance in relation to health impacts. The Applicant's consideration of health impacts is consistent with the advice in the NPS and I find that there are no conflicts with the relevant NPSs.

3.8. LANDSCAPE AND VISUAL

Introduction

3.8.1. This Section considers the Proposed Development's landscape and visual effects including the effects on views from the PRoW network, the effects from glint and glare from the solar arrays and the effectiveness of the proposed mitigation measures.

Policy Considerations

National Policy Statements

3.8.2. Paragraph 5.9.1 of 2011 NPS EN-1 notes that the landscape and visual effects of energy projects will vary from case to case according to the type of development, its location and the particular landscape setting.

3.8.3. In paragraph 5.9.8 of 2011 NPS EN-1 there is recognition that virtually all energy NSIPs will have landscape effects and that projects need to take account of their potential impacts. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

3.8.4. Paragraph 5.9.14 of 2011 NPS EN-1 provides guidance for the consideration of the landscape effects of energy NSIPs that would be located outside nationally designated areas, but nevertheless may be highly valued and protected by development plan designations. Where a development plan has policies based on local character assessments, particular attention should be paid to such assessments, but it further advises that local landscape designations should not be used in themselves to refuse consent.

3.8.5. Paragraph 5.9.15 of 2011 NPS EN-1 highlights that the scale of energy NSIPs may mean that they are visible over long distances. It is therefore necessary to judge whether any adverse landscape impacts would be so damaging as to outweigh an NSIP's benefits, including its need.

3.8.6. Paragraph 5.9.16 of 2011 NPS EN-1 advises that in considering whether any adverse impacts would or would not be acceptable, regard should be paid to the duration of those impacts, including their reversibility in reasonable timescales.

3.8.7. Paragraph 5.9.18 of 2011 NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites or visitors to an area and it is therefore necessary to judge whether the visual effects outweigh the benefits of the project.

3.8.8. Paragraph 5.9.21 of 2011 NPS EN-1 refers to the potential for reducing the scale of projects to help mitigate their visual and landscape effects, although that might result in a significant operational constraint and reduced generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. Paragraph 5.9.22 goes on to

indicate that adverse landscape and visual effects may be minimised through appropriate siting, design and landscaping schemes.

3.8.9. 2024 NPS EN-1 contains similar advice including that the scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

3.8.10. In addition, 2024 NPS EN-3 advises applicants should consider the potential to mitigate landscape and visual impacts through, for example, screening with native hedges, trees and woodlands. It advises that Solar PV panels are designed to absorb, not reflect, irradiation. However, the Secretary of State should assess the potential impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure (including aircraft departure and arrival flight paths). It also notes there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety. Therefore, unless a significant impairment can be demonstrated, the Secretary of State is unlikely to give any more than limited weight to claims of aviation interference.

3.8.11. In relation to PRoW, 2024 NPS EN-3 advises that applicants are encouraged where possible to minimise the visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape. It notes that for example, screening along public right-of-way networks to minimise the outlook into the Solar Park may, impact on the ability of users to appreciate the surrounding landscapes.

3.8.12. 2024 NPS EN-5 notes that applicants should carefully consider the placement of substations in the local landscape and consider opportunities for screening them.

National Planning Policy Framework (NPPF)

3.8.13. Chapter 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment. It indicates that planning decisions should contribute to and enhance the natural and local environment by, amongst other matters, protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

Development Plan Policies

3.8.14. Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy policy SO2 seeks to protect the landscape and countryside. Policies DM4, DM9, DM10 in the Bassetlaw Core Strategy seek development that respects and is sensitive to its landscape setting.

3.8.15. The Central Lincolnshire Local Plan Policies S5, S14, S62 seek development commensurate with the character of the location, development that has regard to landscape character, ensure that Areas of Great Landscape Value are protected. Policy S48 seeks to protect

maintain and improve existing walking and cycling infrastructure which would include PRoWs. Policy S66 seeks to protect trees, woodlands and hedgerows.

The Applicant's Case

3.8.16. The Applicant's case is set out in Chapter 10 of the ES, this was updated during the Examination at Deadline 2 and the latest version is [REP2-010]. It summarises the likely impacts and significant effects of the Proposed Development on landscape and visual amenity. The assessment comprises a Landscape and Visual Impact Assessment (LVIA) which has been undertaken in accordance with industry guidance. The LVIA draws a clear distinction between landscape and visual impacts:

- Landscape Effects: relate to changes to the landscape as a resource, including physical changes to the fabric or individual elements of the landscape, its aesthetic or perceptual qualities, and landscape character.
- Visual Effects: relate to the changes arising from the proposed Scheme to visual receptors (people) with views of the landscape or townscape (eg, local residents, users of public rights of way (PRoW) or undertaking other recreational activity, people at work including outdoor workers, or passing vehicle users).

3.8.17. The ES Chapter 10 is supported by a number of figures and appendices as follows:

- Figure 10-1: LVIA Study Area [APP-060];
- Figure 10-2: Topography [APP-061];
- Figure 10-3: Public Rights of Way [APP-062];
- Figure 10-4: National Character Areas [APP-063];
- Figure 10-5: Regional Landscape Character Areas [APP-064];
- Figure 10-6: County and District Landscape Character Areas [APP-065];
- Figure 10-7: Areas of Great Landscape Value; [REP2-014]
- Figure 10-8: Local Landscape Character Areas [APP-067];
- Figure 10-9A: ZTV (Bare Earth) - All Features [APP-068];
- Figure 10-9B: ZTV (Bare Earth) - Solar Panels [APP-069];
- Figure 10-9C: ZTV (Bare Earth) - Substation / Battery Storage [APP-070];
- Figure 10-10A: ZTV (With Surface Features) - All Features [APP-071];
- Figure 10-10B: ZTV (With Surface Features) - Solar Panels [APP-072];
  Figure 10-10C: ZTV (With Surface Features) - Substation / Battery Storage [APP-073];
- Figure 10-11: Viewpoint Locations on OS Mapping [REP2-015];
- Figure 10-12: Viewpoint Locations on Aerial Photography [REP2-016];
  Figure 10-13: Cumulative ZTV (with Surface Features) - Gate Burton with Cottam Solar Farm [APP-076];
- Figure 10-14: Cumulative ZTV (with Surface Features) - Gate Burton with West Burton Solar Farm [APP-077];
- Figure 10-15: Cumulative ZTV (with Surface Features) - Gate Burton with Tillbridge Solar Farm [APP-078];

- Figure 10-16: Photosheets - Viewpoints 1-23 [APP-079, APP-080, APP-081, APP-082];
- Figure 10-17: Photosheets - Cumulative C1-C5 [APP-083, APP-084, APP-085, APP-086];
- Figure 10-18: Photosheets - LCC1-10 [APP-087, APP-088, APP-089, APP-090];
- Figure 10-19: Residential Viewpoint Locations [APP-091];
- Figure 10-20: Photosheets – Residential Visual Amenity Survey (Cover sheet – Photomontages are not included in ES for privacy reasons) [APP-092];
- Figure 10-21: Vegetation Removal for Solar and Energy Storage Park (Change Request version) [CR1-003];
- Figure 10-22: Advanced Planting Plan [APP-094]; and
- Figure 10-23: Outline Landscape Masterplan [APP-095].

3.8.18. In terms of relevant appendices, these included:

- Appendix 10-A: Legislation and Planning Policy [APP-144];
- Appendix 10-B: LVIA Methodology [APP-145];
- Appendix 10-C: Landscape Baseline [APP-146];
- Appendix 10-D: Landscape Assessment [APP-147];
- Appendix 10-E: Visual Baseline [APP-148];
- Appendix 10-F: Visual Assessment [APP-149];
- Appendix 10-G: Residential Visual Amenity Survey [APP-150];
- Appendix 10-H: LVIA Cumulative Effects [APP-151];
- Appendix 10-I: Arboricultural Impact Assessment [APP-152 and APP-153]; and
- Appendix 10-J: Consultation Meeting Notes [APP-154].

3.8.19. The Proposed Development's parameters are secured through the Outline Design Principles (ODP) [REP6-009] and the Applicant contends that an indicative site layout plan [APP-033] presents a realistic and deliverable layout in accordance with the ODP.

The Study area and Zone of Theoretical Visibility (ZTV)

3.8.20. An initial 'Area of Search' extending 5km from the Order limits to the north, south and west and 10km to the east was used to determine the potential visibility of the Proposed Development. Following a desk study and consideration of the initial study area, the study area was refined and extends approximately 2km around the Order limits of the GCC, 3km west of the Order limits and 5km to the north, east and south. The varying radii respond to the topographical setting of the Proposed Development, existing screening provided by pockets of woodland, extensive vegetation along field boundaries and roads as well as changes in landform. Elevated ground further to the east within approximately 10km from the Order limits of the Proposed Development has been included as part of a wider study area to assess long distance landscape and visual effects as well as cumulative effects.

3.8.21. A specific designated viewpoint, Tillbridge Lane Viewpoint (VP07), is located approximately 9.5km south-east of the Order limits boundary

providing panoramic views across the landscape to the west. This viewpoint is illustrated in Viewpoint / Photomontage 7, which is included in ES Volume 2: Figures 10-16 Photosheets Viewpoints 1-23. This viewpoint and another elevated viewpoint along the B1398, Middle Street, north-east of Ingham have also been included outside of the study area and within approximately 10km from the Order limits.

3.8.22. The site and its vicinity consists of agricultural fields under arable production interspersed with individual trees, hedgerows, tree belts (linear), small woodland blocks and farm access tracks. Several small rural villages are located adjacent or within the vicinity of the Order limits. The majority of the Order limits is located within a gently undulating landform, which becomes flatter to the east. The land use within the study area is generally a mosaic of arable farmland, with patches of woodland, drains and ponds scattered across the area. The River Trent bisects the study area, with the Solar and Energy Storage Park located east of this river.

3.8.23. The main road network includes the A156, which traverses the western part of the study area in a north-south alignment. The A1500 crosses the southern part of the study area in a north-west to south-east alignment. The B1241 traverses the eastern and northern section of the study area. There is also a network of roads that connect small hamlets and villages. Other infrastructure within the study area includes the Sheffield to Lincoln railway line which runs in a north/ north-western – south/ south-eastern alignment through the centre of the study area and the Solar and Energy Storage Park.

3.8.24. The location of PRoW within the study area is mapped in ES Volume 2: Figure 10-3 [APP-062]. The majority of PRoW within the study area are located west of the River Trent, between the River Trent and in and around the villages of Sturton le Steeple, North Leverton with Habblesthorpe, South Leverton, Treswell, Rampton and Woodbeck. There are some 16 PRoWs located along the Solar and Energy Storage Park boundary or within or along the GCC. The Solar and Energy Storage Park and GCC are illustrated on Figure 1-2 within ES Volume 3 [APP-028].

3.8.25. Overall, the vegetation patterns within the Order limits are representative of those across the study area, consisting of woodlands, hedgerows and trees, as well as open field patterns.

3.8.26. The Applicant identifies an Area of Great Landscape Value (AGLV) as designated by WLDC which covers part of the study area, extending from Marton in the south, to north of Gainsborough, covering land between the River Trent in the west and the East Midlands Railway to the east.

3.8.27. The study area is covered by published landscape character area assessments including at national, regional, county and district levels. It also includes local landscape character areas. These are identified and described in the ES and the Applicant notes that it has had regard to them.

Representative Viewpoints

3.8.28. A total of 38 viewpoints including cumulative viewpoints have been identified to represent the views of the visual receptors. The locations of the proposed 38 viewpoints selected are shown on ES Volume 2: Figure 10-11 [APP-074]and Figure 10-12 [APP-075]. NCC and LCC were consulted on the initial viewpoints and NCC confirmed it sought no additional viewpoints. LCC identified a further ten viewpoints to those initially identified. These are included in the 38 viewpoints provided. The viewpoints are provided in booklets in the figures attached to the ES; viewpoints 1 to 23 are the main views of the site and GCC [APP-079, APP-080, APP-081 and APP-082], cumulative viewpoints are identified as C1-C10 [APP-083, APP-084, APP-085 and APP-086], and viewpoints LCC01-LCC10 are the additional viewpoints agreed with LCC [APP-087, APP-088, APP-089 and APP-090].

3.8.29. Table 10-5 in Chapter 10 of the ES identifies the visual receptors providing a typical description and identifying the associated representative viewpoints that are applicable. The Applicant provides a description of the viewpoints and views at different parts of the Proposed Development including the west, north, east and southern sections of the Order limits as well as specific locations and properties adjacent to the Order limits.

Embedded mitigation

3.8.30. The Applicant sets out the embedded mitigation in section 10.8 of Chapter 10 of the ES. It is considered by the Applicant that the Proposed Development has been deigned to avoid adverse effects on the landscape and views through consideration of options, appraisal and refinement or evolution of the design. Modifications made to the design of the Proposed Development to avoid and reduce effects have been identified as including limiting the extent of land-take within the Order limits, siting of components, and, where possible, minimising impacts on established vegetation and features that contribute to landscape character and visual amenity. This has been affected by the use of a landscape strategy with good design a key consideration. Careful siting in the landscape, identification of sensitive locations and allocating dedicated landscape works within the work plans to reduce effects, conserving existing vegetation patterns, creating new green infrastructure and sensitive design in terms of form, colour, materials and lighting.

Assessment of effects

3.8.31. Section 10.9 of ES Chapter 10 sets out the assessment of likely impacts and effects broken down into construction, operational and decommissioning effects.

3.8.32. The Applicant concludes that the construction of the Proposed Development would not have significant effects on regional, county or district level published landscape areas due principally to the scale and sensitivity of the area with at most minor adverse effects occurring. In the context of the AGLV, the Applicant concludes the susceptibility to

construction is assessed as medium. As a local designation of medium value, the sensitivity of the AGLV is assessed as medium and therefore the level of effect will be minor adverse on it during the construction stage.

3.8.33. In terms of Local Landscape Character Areas, significant effects are identified to LLCA02: Ancient Woodland Ridge (major adverse), LLCA06: Clay Farmlands (moderate adverse) and LLCA 10 Cottam Plain (moderate adverse).

3.8.34. In terms of visual effects during construction the Applicant notes these will be greatest for those properties on the fringes of the nearby settlements facing the Order limits where the significance of effect is concluded to be moderate adverse and temporary. Significant visual effects for residents located in the wider study area will reduce quickly to minor, negligible and neutral with increasing distance from the Order limits. Views from the western section of the study area, west of Gate Burton and the A156 (Gainsborough Road) will be either barely discernible or confined to upper sections of cranes or indeed fully screened by intervening landform and vegetation. These visual effects and those of residents further afield and west of the River Trent are estimated to range from very low to low and their significance will range from negligible – none to neutral.

3.8.35. In terms of road users and public transport, the Applicant is of the view where more open views from the road network are available their significance is moderate-major adverse. Visual effects along the remaining road network will reduce from medium-low to very low with increasing distance resulting in a minor-negligible adverse or neutral significance. Visual effects for train passengers will range from medium to low and their significance moderate - minor adverse in available views.

3.8.36. In terms of recreational users, users of PRoW LL|Knai|44/2, sections of LL|Upto|53/1 will experience high visual effects. The magnitude of visual effects will be medium–high and the significance of these effects will be major to moderate adverse due to construction located adjacent to and along sections the PROW. Along the GCC, where sections of PRoW will be either located within the GCC or in close proximity with often open views of the proposed construction works visual effects would be moderate to major adverse. Other PRoW visual effects are likely to be minor or negligible as visibility reduces.

3.8.37. Users of the River Trent and the Tillbridge lane viewpoint are concluded to be negligible or neutral while outdoor workers are assessed as an effect of moderate-minor adverse.

3.8.38. Moving to operational effects, the Applicant again identifies no significant effects on regional, county or district landscape character areas with the effect on the AGLV being minor adverse. Operation of the Proposed Development during winter of the first year will result in significant effects to LLCA 02: Ancient Woodland Ridge (major adverse) and LLCA 06: Clay Farmlands (moderate adverse).

3.8.39. In terms of visual effects, the Applicant identifies the worst effect is moderate-minor adverse for recreational users and outdoor workers given that advanced planting will introduce some screening and reduce impacts from glint and glare.

3.8.40. Similar and improving effects on landscape are identified by the Applicant for year 15 as planting matures. Visual effects, with the increasing maturity of planting, are reduced with none identified for the GCC. Recreational users will experience a moderate adverse effect on PRoW LL|Knai|44/2.

3.8.41. Decommissioning effects on the landscape and visual amenity are likely to be similar to those temporary impacts experienced during construction of the Proposed Development but reduced for the majority of viewpoints on account of the containment provided by landscape mitigation measures including proposed vegetation, which will have reached maturity, and general landscape management measures including additional height of existing hedges.

Residual effects and Conclusions

3.8.42. Overall, the Applicant concludes this is a site and study area which can accommodate the Proposed Development with no over-riding unacceptable landscape and visual effects. Significant residual effects are defined as moderate or major and are set out in Tables 10-7, 10-8, 10-9 and 10-10 of Chapter 10.

Cumulative effects

3.8.43. The Applicant notes that in summary, the assessment in ES Appendix 10-H has identified at worst minor adverse effects on landscape during construction for the following projects: West Burton Solar Project, Cottam Solar Project, Cottam Power Station demolition, and Stow Park Road Residential Development.

3.8.44. During operation, the Applicant notes the cumulative effects from the Proposed Development and Cottam Solar Project or Tillbridge Solar Farm are considered minor adverse. Cumulative effects with West Burton Solar Project are moderate adverse which is considered significant.

3.8.45. West Burton Solar Project, Cottam Solar Project, Tillbridge Solar Farm and the Proposed Development have a combined cumulative impact on landscape of moderate adverse, which is considered significant according to the Applicant. Given the proximity of the Proposed Development with these other solar projects, and the combined scale, the Applicant notes it has worked in partnership to identify areas where projects can collaborate to manage environmental effects.

Views of IPs

Host Authorities

3.8.46. LCC in its LIR [REP-043] in terms of landscape identifies policies S5, S53, S58, S 62 and S66 of the CLLP 2023-2043 as most relevant local policy

they state the theme for these policies centres around the promotion of "*suitable*" developments within the countryside. Specifically, developments should aim to be of a good design and scale that do not detract from the character of an area and do not disrupt the availability of amenities within the area or neighbouring areas (such as agricultural land, woodland and hedgerows).

3.8.47. LCC advises these policies are the key ones as this development entails a significant shift in both the use of the landscape as well as its overall visual appearance. It is also worth noting that the number of policies relating to this criterion indicate that this should be thoroughly assessed.

3.8.48. LCC points to the fact it commissioned AAH Consultants to assist in the consideration and review of the landscape and visual elements of the Gate Burton Scheme (GBS) proposal and have engaged and provided feedback and advice to the Applicant's design team on behalf of the Council throughout the pre-application stage. A full copy of AAH's report and comments having reviewed the DCO application documentation were attached to the LIR as Appendix A and LCC notes its assessment is based on those comments and should be read in conjunction with them. LCC's assessment was:

- The Landscape and Visual Impact Assessment (LVIA) and the associated figures, appendices and documents provide a thorough analysis of the development. The assessment is detailed and laid out in a logical manner, and the process of assessment is thorough and well explained. It has been carried out to industry best practice and guidance, such as Guidelines for Landscape and Visual Impact Assessment (GLVIA3), by a team of competent Chartered Landscape Architects.
- The LVIA clearly draws a distinction between landscape effects and visual effects, with the main chapter focussing on likely 'significant' effects (major and moderate effects are generally considered 'significant'). The LVIA presents an assessment of "*worst-case*" scenario of the development, based on maximum parameters presented in the ODP.
- The study area selection is explained in detail and the radius of the study area ("*approximately 2km around the Order limits of the GCC, 3km west of the Order limits and 5km to the north, east and south*") is justified and appropriate. A wider area has also been considered (up to 10km) beyond the main study area to include long distance views to the east, associated with the rising land of the ridge AGLV.
- The masterplan has evolved through an iterative process, however, there appears in places an over-reliance upon planting just to screen proposals, without full attention to the potential impact of screening on this landscape. The LVIA and appendices do not go into detail about the level of care to ensure the design of mitigation enhances the physical landscape, or views from receptors, other than just screening the development.

3.8.49. LCC notes the LVIA identifies significant landscape and visual effects at the four phases of construction, operation (year 1), operation (year 15), and decommissioning.

- The construction effects appear to be under-estimated in places, including visual impact and the impact of damage or loss of vegetation due to access requirements. However, this has been discussed with the developer team, and additional information on wider highways works and vegetation removal is being investigated to clarify this through the examination process. Recommend limiting vegetation loss along site boundaries for access or sight lines, or along construction access routes as this has the potential to change the character of the local landscape beyond the limits of the development.
- Regarding cumulative effects (cumulative landscape and visual effects are those that: "*result from additional changes to the landscape or visual amenity caused by the Proposed Development in conjunction with other developments*"), the LVIA identifies that there will be adverse cumulative effects with those sites identified to be included within the assessment:
    - Only minor effects were identified at construction.
    - Moderate effects were identified at operation within the site and West Burton Solar.
    - Moderate effects were identified for the combined, West Burton Solar Project, Cottam Solar Project, Tillbridge Solar Farm and the Scheme.

3.8.50. LCC considers that the cumulative change to the landscape will be considerable, and the combination of two or more sites has the potential to change the local landscape character at a scale that would be "*of more than local significance*" or would be "*in breach of recognised acceptability, legislation, policy or standards*". The cumulative impact of the four adjacent NSIP solar sites has the potential to affect the landscape at a regional scale through predominantly a change in land use from arable to solar, creating an "*energy landscape*" as opposed to a rural/ agricultural one at present. This also has the potential to change the character from an agricultural landscape to that of an "*energy landscape*" when traveling through the area, and the sequential effects of multiple large scale solar sites, of which some are spread over extensive, fragmented redline boundaries, exacerbating the perception of being surrounded by solar development.

3.8.51. LCC goes on to state that in view of the conclusions from the Council's assessment of the landscape and visual impact of the development, negative impacts have been identified for the site some of which may be mitigated by the production of further evidence but the cumulative impact when combined with the other proposed solar farms in this location is negative, which results in a conclusion that the scheme would be contrary to Local Plan Policy S.14 and also the other relevant Landscape Policies outlined above.

3.8.52. In terms of PRoW, LCC notes there are a number of PRoW in and around the Order limits. Whilst these are to be retained and ongoing access maintained, albeit with some temporary diversions, there would nonetheless be a negative visual impact to the users of the recreational value of various public rights of way as a result of the development. There would be a change of experience from that of woodland and open fields to a more industrial landscape when travelling through the solar park with its associated infrastructure creating a feeling of enclosure rather than the current open landscape views.

3.8.53. LCC concludes by stating that any positive benefits will need to be weighed against the negative impacts which it summarises and which include:

- A permanent and negative impact upon the landscape character and the appearance of the area as a consequence of changes to the current arable agricultural land use. In view of the conclusions from the Council's assessment of the landscape and visual impact of the development, negative impacts have been identified for the site some of which may be mitigated by the production of further evidence, but the cumulative impact when combined with the other proposed solar farms in this location is negative which results in a conclusion that the scheme would be contrary to Local Plan (CLLP 2023-2043) Policies S5, S14 and S16.
- Negative impacts on the users of PRoW in and around the Proposed Development as a consequence of changes to the visual appearance of the area and views from these routes.

3.8.54. A summary of points from WLDC in its LIR [REP-053], include:

- Sensitivity of residential receptors are rated too low – generally all residential receptors are considered to be of high sensitivity but here some are reported as moderate. This is possibly because of a combination at viewpoints with less sensitive receptors like users of roads.
- Future baseline seems slightly lacking in detail – information on proposals in local plans for housing (if any) should be reported.
- Effect on workers in indoor locations are not reported.
- Cumulative effects section in the chapter of the ES is lacking in detail.
- Relationship to Glint and Glare chapter is lacking detail.
- It is noted that the Landscape and Visual Amenity chapter of the ES considers the cumulative effects of the other Cottam, Tillbridge and West Burton schemes. Whilst this is welcomed, the scale of the schemes will have a lasting impact on the landscape of and the character and setting for central Lincolnshire.

3.8.55. In its conclusions, WLDC notes that the Proposed Development will have an adverse impact on the landscape and character setting in West Lindsey throughout all the stages of the development and cannot be mitigated. When considered in combination with the other proposed solar schemes, the entire landscape character of West Lindsey will be changed for decades to come.

3.8.56. NCC in its LIR [REP-045] draws attention to WCS policy SO2 which seeks to protect the landscape from harmful development. In terms of PRoW, NCC states that PRoW are an important consideration. It is anticipated that as the cabling is underground that the main disruption to PRoW would be during the construction phase.

3.8.57. BDC in its LIR [REP-038] draws attention to policies DM4, DM9 and DM10 of the BCS 2011. BDC note that the majority of the cable routing is found in the Trent Washlands Character Zone predominately in zones 21, 22 and 47 where the policy is to conserve and reinforce.

3.8.58. BDC further notes that Rampton Thorns is an inventory of trees and woodland, which is just on the boundary of the corridor route. The Council's Tree Officer has commented on this application and advises that as Bassetlaw only has the cable route the impact on trees would be minimised. The western boundary falls short of a number of Tree Preservation Order (TPO'd) trees further to the West at Rampton. It also circumnavigates a square block of woodland that is outside the existing substation at Cottam, on the Rampton side. Similarly avoiding a wooded area to the North on the Bassetlaw side of the bank opposite Trent Port, by passing below the Southern boundary of the trees. The Tree Officer is satisfied that sufficient measures have been taken to avoid trees and woodlands as best as possible by due consideration of the routes. It is important that adequate tree protection and hedgerow protection measures are put in place to ensure minimal impact on trees and hedgerows during construction.

3.8.59. BDC comments that PRoW are another important consideration for Bassetlaw and advice should be obtained from NCC's PRoW. It is anticipated that as the cabling is underground that the main disruption to PRoW would be during the construction phase.

Other IPs

3.8.60. There were a significant number of RRs submitted. Most of the IPs that submitted RRs including from Parish Councils, 7000 Acres, and individuals made comment on the significant negative effects the Proposed Development would have on the local and wider landscape and the visual amenity of the area. Many IPs noted that the impact to the landscape and visual amenity would be compounded significantly by the cumulative effects of four Solar Schemes considered together, namely the Proposed Development, Cottam Solar Scheme, West Burton Solar Scheme and Tillbridge Solar Scheme. There were a number of matters raised including, but not limited to:

- The cumulative effect of how four solar schemes would change the landscape of the wider area to one of an industrial location, resulting in a solar energy landscape rather than agricultural landscape.
- The site is a significant area of land and would take large areas of agricultural land into an industrial use.
- The proposals would be visible from significant distance and the Jurassic ridge to the east.

- The Applicant's assertions that the site is well-screened are not accurate as the undulating landform will expose the site to view over medium and longer distances.
- The proposed mitigation and planting would not establish and there is no credible plan to ensure it would be effective.
- There would be significant adverse effects from glint and glare from the site.
- The Proposed Development would spoil the enjoyment of the countryside and would be visible to receptors on PRoW and local roads.
- There would be a sense of being enclosed and encircled by solar farms given the size and scale of the proposal and the others in the area.
- Concerns were expressed by local residents regarding views from their properties.
- Proposals for fencing were not appropriate in the countryside.
- The proposed lighting would be obtrusive and detrimental to the character of the area.
- The proposed mitigation focuses on planting to screen the development rather than dealing with its impact.
- The proposed mitigation of planting would enclose views of the open, longer views in the area.
- Views from PRoW would be adversely affected by enclosing planting.

Examination

3.8.61. I carried out two Unaccompanied Site Inspections [EV-001 and EV-001b] and one Accompanied Site Inspection [EV-001a]. The unaccompanied Inspections were undertaken towards the beginning and end of the Examination (in May and December) and provided me with the opportunity to view the surrounding landscape and characteristics of the area, as well as the publicly accessible boundaries of the site and relationships with PRoW in the area. The later Unaccompanied Site Inspection allowed me to view the additional land that was included in the Change Request. The Accompanied Site Inspection provided an opportunity to view elements of the site that were otherwise not particularly visible from public locations including the main substation, BESS, warehouse and office site. It provided an opportunity to understand the extent of the site from within the site boundaries. The impressions, experience, sights and views I gathered on the Site Inspections have informed my conclusions on the effects of the Proposed Development on landscape and visual amenity in the area.

3.8.62. In my first set of written questions ExQ1 [PD-006], I asked a series of questions in relation to landscape and visual amenity matters seeking clarification and views on design matters, glint and glare, the Applicant's assessment assumptions and methodology (including in relation to cumulative effects) and on mitigation. Responses were provided at Deadline 2 from the Applicant [REP2-041], LCC [REP2-049], WLDC [REP2-057], NCC [REP2-053] and BDC [REP2-047] as well as a number of Parish Councils and individual IPs. In relation to the general methodology and assessment, whilst some minor issues or discrepancies were raised, no significant points were identified. The Host Authorities

including LCC agreed that the Zones of Influence and sensitive receptors were acceptable, and the viewpoints had been developed through consultation and were representative views although issues were expressed as to the detail of some of the photomontages. LCC also agreed that a Residential Visual Amenity Assessment (RVAA) was not required agreeing that the Residential Visual Amenity Threshold was not reached and therefore a RVAA had not been carried out.

3.8.63. LCC confirmed that it agreed with the Applicant's approach and the process has ensured views from residential properties have been considered, particularly those identified as having the potential to experience 'overwhelming' visual effects. This has fed back into the layouts and mitigation proposals to reduce adverse visual effects, such as by increasing offsets to development and/ or additional mitigation planting.

3.8.64. Further questions on detail to understand the scale of the site and its relationship with the other solar farms were raised at ExQ2 [PD-009] and in relation to mitigation measures at ExQ3 [PD-013]. The Applicant responded to ExQ2 by providing dimensions, as requested, and a map with distances marked at [REP4-046]. In relation to mitigation, it was confirmed [REP5-047] that the Applicant would be responsible for establishing, managing and monitoring the implementation and establishment of landscape and ecological mitigation within the five-year establishment aftercare period. The Applicant would inspect and report on the success of establishment during this period. Any long-term biodiversity monitoring and management requirements would be carried out by the Applicant and/ or a Contractor appointed by the Applicant. The oLEMP and monitoring would be active through the 60 year lifetime of the Proposed Development and involve inspection of the woodland, hedgerows, grassland, and wetland habitats to ensure that they are being managed accordingly. Initially establishment monitoring would be undertaken including a detailed plan for the establishment and management of new tree and shrub belts which would be developed for the five year establishment maintenance period through the detailed LEMP. This is secured through the oLEMP [REP5-031] which is secured through Requirement 7 in the rDCO.

3.8.65. I also held an Issue Specific Hearing in which I devoted a session to landscape and land use matters [EV-008b]. The first part focussed on the landscape and visual effects of the Proposed Development including the design of the larger elements of the Proposed Development as well as the wider landscape effects and impacts. I considered matters related to the cumulative effects with other solar schemes, the sequential impacts when travelling through the wider area, the issue of the AGLV as well as mitigation measures, vegetation screen planting and effects on the users of PRoW. Written summaries of the oral representations made by parties who attended were provided. These included the Applicant [REP3-027], LCC [REP3-037], WLDC [REP3-044], 7000 Acres [REP3-050] and Sturton by Stow Parish Council [REP3-040]. I have had regard to the matters raised at the hearings and noted in the summaries.

Conclusions on Landscape and Visual Amenity

3.8.66. The application site is reasonably reflective of the wider landscape being characterised by a relatively flat but undulating topography with fields divided by hedgerow and interspersed with woodland blocks. The land is predominantly put to agriculture with larger fields and more open vistas located to the east of the railway. The River Trent provides a significant feature to the west of the application site and beyond where a more open floodplain is presented through which the GCC would run. Cottam and West Burton Power stations, with their substantial stacks and the overhead transmission lines, create significant features in longer views. To the east at some distance is a ridge of elevated ground referred to as the Jurassic ridge which is located more than 9km to the east.

3.8.67. Consideration of character and visual amenity whilst being broken down through reference to various character assessments indicators and viewpoints is also one that is subjective. This is displayed where there is a disagreement of professional judgement between the Applicant and some IPs and in attributing a degree of scale to a harm or effect.

3.8.68. There is no disputing the fact that the Proposed Development is of a significant and substantial scale and covers a significant area. The nature and scale of the character areas are documented, and the site is reasonably representative of many of the features identified within the character assessments. It presently comprises open fields enclosed by hedging and set in an undulating topography. The full extent of the site is not readily discernible from the surrounding area or public locations because of woodland blocks, hedgerows and the changes in landform. The true extent and scale of the site was apparent on the accompanied site visit. On elevated parts of the site, a full appreciation of the dimensions of the site were apparent. But this was from private land which would not be accessible to the public and such understanding of the effects would not be readily apparent from views on the surrounding highways and other publicly accessible locations.

3.8.69. The Order limits or study area are not covered by any national landscape designated sites. West Lindsey has designated AGLVs which are protected by local plan policy. The Applicant identifies that one AGLV covers part of the study area, extending from Marton in the south, to north of Gainsborough, covering land between the River Trent in the west and the East Midlands Railway to the east. This includes the eastern part of the Order limits. At ISH3 it was also noted that the Jurassic ridge is included in another AGLV.

3.8.70. I have considered whether the AGLV or indeed any of the area is a 'valued landscape' in the context of the NPPF. The Applicant produced a technical paper [REP3-030] following our discussion at ISH3 to provide its view that the location was not a valued landscape or part of one. WLDC references the local plan designation and the features identified, which go to make up the site and surroundings particularly to the west of the railway line, to argue that it should be treated as such. Overall, I am satisfied that whilst the local community value the area and it contains features, including ancient woodland, the landscape is primarily

comprised of agricultural fields bounded by hedgerow which although undeveloped and pleasant countryside, is not elevated above the ordinary and is not part of a valued landscape for the purposes of the NPPF. Having said that, the AGLV designation is also an important and relevant matter that I have had regard to.

3.8.71. In the context of the area of the site that lies within the designated AGLV, there is greater landscape value than that part of the site to the east of the railway which is flatter and contains larger fields. The Applicant has sought to identify elements within the landscape which contribute to its elevated status and demonstrate that those have been retained and/ or strengthened. These include the woodland blocks including areas of ancient woodland which the Applicant includes buffer offsets to protect, as well as additional and reinforcing of hedgerow planting to reinforce and recreate some field boundaries previously lost. Whilst these are recognised as positive attributes they do not ameliorate the significant change from an undeveloped agricultural landscape to a developed more industrialised character.

3.8.72. The Applicant identifies a minor adverse effect during construction at year 1 opening. In my view, the Proposed Development reduces the quality of the AGLV as the site is part of it and that is contrary to local plan policy. The effect during construction and the early years would be harmful and although reduced would continue to be harmful during the lifetime of the Proposed Development as it changes the fundamental nature and character of this area. This is a matter that weighs against the Proposed Development. The landscape is not a nationally designated landscape albeit protected as a locally designated one. NPS EN-1 advises that all energy infrastructure is likely to have visual effects for many receptors around proposed sites and that locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development. I therefore ascribe this harm moderate negative weight.

3.8.73. Having reached this conclusion that also affects my consideration on the effects on the wider LCA that the site is located within. The Applicant has assessed the effect on the regional, county and district LCA as being not significant. The Applicant, however, has identified and characterised LLCAs and does identify a significant effect on three LLCA 02: Ancient Woodland Ridge, LLCA 06: Clay Farmlands and LLCA 10 Cottam Plain identifying the effect ranging from moderate to major adverse during construction and year 1 of operation reducing as landscaping matures.

3.8.74. The Proposed Development would result in a significant change to the site area. The site area makes up a significant proportion of the overall LLCA 02 and 06 designated area, and this would be where the Solar and Energy Storage site are to be located. Given that this falls within part of the AGLV designation and that there is significant change to the land use through the proposed built development, I conclude that there would be significant adverse effects during construction and at year 1. This would be in my view, a moderate to major adverse effect given the extent. In the context of the GCC during construction, the works would be more

visible and therefore moderate adverse but once the construction works are complete and mitigation and landscaping reintroduced this would be according to the Applicant negligible from year 1 onwards. Whilst after construction at year 1 there will still be some scaring to the landscape and planting will take time to mature. The impact will be limited but will still be there whilst landscaping establishes there will still be some harm in the early years to which a scribe a little weight.

3.8.75. The effects on the LLCA would impact the wider LCAs as these LLCA areas contribute to those wider LCA areas. However, the context in terms of the scale of the areas and the extent to which the overall site forms an important component of those LCAs and the extent to which it would change their character is then a matter to consider. The Applicant in its ISH3 summary of oral representations provided figures on general size and proportions of areas which demonstrated that the Solar and Energy Storage site is a relatively small element of these areas. Whilst it may contain representative features and some of these would be lost, this would not dramatically change the character of the whole LCA. Nor does it form a significant or substantial element in longer and wider views given the low scale (3.5m) of the solar panels and the general height of fencing in relation to the hedging, which it is proposed to manage, secure and improve through the oLEMP. In general, I accept the Applicant's overall position in terms of the effect of the Proposed Development on the Regional, County and District LCA.

3.8.76. Of significant concern to the Host Authorities, particularly WLDC and LCC, is the cumulative effect in association with the other solar schemes in the area. They are concerned the introduction of a number of solar schemes will together change the overall composition and character of the wider area. The focus and concentration in this locality would elevate the effects from more than local significance and mean that the solar schemes would become more than a component of the areas but would become a key component and change the nature of the area to one dominated by the schemes such that the area would have a solar energy industrial character rather than a rural agricultural one. The Host Authorities consider that a sequential experience of travelling through the area would lead to significant and numerous interactions and views of Solar arrays and would give a perception that the area is surrounded and dominated by them.

3.8.77. The Applicant's ES considers primarily Cottam and West Burton although reference is made to Tillbridge, and this was certainly referenced by all IPs' when the matter was discussed at ISH3. A technical note attached to the Joint Report on Interrelationships between Nationally Significant Infrastructure Projects [REP6-041] undertook a review of cumulative effects and concluded in respect of the LVIA that no changes arose in relation to the conclusions identified in the ES. According to the Applicant, the latest information (West Burton and Cottam ES and Tillbridge PEIR) has been reviewed and does not change the ES conclusions in relation to cumulative effects in relation to the main Solar and Energy Storage Park site nor the GCC.

3.8.78. I have sympathy with the proposition that, with the other solar schemes in place in the locality, there would be opportunity during movement through the area for views of solar arrays to become frequent either in glimpsed views through gaps in hedges, accesses or changes in topography, and that this could lead to a greater influence on the appreciation of the landscape and the features that contributed to it. I am therefore of the view that the cumulative effect of the schemes together would add to any harmful effects and would lead to greater adverse effects.

3.8.79. I am, however, mindful that this is in a relatively limited area (comparatively speaking in respect of the National, Regional and District LCA), that there are other significant features on the horizon and wider views (the Cottam and West Burton Power Stations) which also contribute to the overall character. The location is not isolated with no development but its nature would change, and this change in the character would be adverse.

3.8.80. I characterise this as a moderate adverse effect cumulatively given:

- the area affected would be relatively limited (comparatively speaking),
- the mitigation measures for all schemes would seek to reduce the opportunities for views through additional screening and planting,
- the discreet positioning of each scheme or elements of these schemes would limit any opportunities where they are viewed together, and
- it would only be sequentially passing through the area where such views are identified.

3.8.81. Given the travel timings between sites suggested in ISH3, this would be mostly affecting car passengers where timings are shorter and therefore the incidents perceived as more frequent. I conclude that in the context of the landscape character of the area, the Proposed Development would have a material effect that would be moderate adverse during construction and at year 1. Whist this would reduce over the life of the Proposed Development and other scheme(s) with maturing landscaping, it would still be moderate adverse given the sequential and continuing effect.

3.8.82. In terms of visual amenity, the Proposed Development would introduce a substantial area of solar panels, a substation, BESS and other development, which would represent built form and would change the character of the area from one of undeveloped primarily agricultural fields to fields developed with solar array. The total extent and scale of this may not be readily visible from one point but glimpsed views, access openings and the undulating nature of the land would expose many instances when the arrays would be visible.

3.8.83. I am reasonably satisfied that the longer views such as from Tillbridge Lane viewpoint or along the B1398 are representative of longer views from the Jurassic ridge. Given the distance to the site, in the region of 9km, and the intervening landform, screening and height of the solar

array panels, this would not be a significant discernible feature in the landscape.

3.8.84. The most significant views that would be affected are those on the periphery of the Solar and Energy Storage Park. In particular, the residences at Clay Farm, Park Farm, South Park Farm, Sandy Barr Cottage and Nursery House along Willingham Road, residences at the western most fringe of Knaith Park along Station Road, Stephenson's Hill Farm along Station Road, and residences within Gate Burton Estate close to the eastern boundary of the estate. It would also affect residents facing the GCC along sections of the A1500/ Stow Park Road at the eastern fringe of Marton, Marton Grange, Rectory Farm, individual properties located along High Street/ A156 south of Marton, Brampton Grange, residences along the northern fringe of Cottam and the eastern fringe of Rampton.

3.8.85. As distance increases from the Solar and Energy Park effects on views would reduce. In the context of the GCC, it is primarily during construction that adverse effects would occur for all receptors. Whilst these may be at worst moderate adverse, they would only be temporary and once construction is complete and with mitigation any effects would be negligible.

3.8.86. Adverse effects due to the Solar and Energy Storage Park during construction would result from activity in close proximity to those properties and settlements. The views would be close range and extend across significant elements of the view. Overall, these are likely to be quite intrusive and disruptive and I would anticipate that during the construction phase residents would reasonably view this a major adverse effect. However, it would be mitigated by the temporary nature of the adverse effects and with some advance planting it may be further mitigated. As advanced planting is undertaken, some reduction would occur at year 1 and as the mitigation planting matures the effects would reduce during operation. Overall, there would remain glimpsed views of the Proposed Development at specific points and accesses etc, but the effects would reduce to minor adverse effects.

3.8.87. Users of PRoW LL|Knai|44/2 and sections of LL|Upto|53/1 would experience high levels of visual effects as construction would take place adjacent to sections of the PRoW. This would result in a moderate to major adverse effect on users of those PRoW. Whilst public access would be managed through an appropriate management plan, the experience and view would be significantly affected during construction. Once construction is complete and mitigation planting introduced, the effects would reduce and during the operation, when the planting matures, the effect would be much reduced albeit glimpsed views of the Solar arrays at points may remain.

3.8.88. In terms of other receptors including road users, boat users and visitors, the greatest effects would be during construction and effects would reduce as mitigation matures. The road users would have glimpsed and oblique views which would be of limited duration. In the context of the

Proposed Development this would result in moderate-major adverse effects during construction on close by roads but would reduce with distance from the site. At year 1, as planting had not matured there would remain significant effects for road users adjacent to the Proposed Development, however, these would reduce as mitigation planting matures.

3.8.89. In the context of cumulative effects for road users, as referenced above with drive times reducing the time between incidence where visibility of schemes may arise, the incidents of viewing solar arrays would create a negative perception of the scale and extent of solar arrays and the effect on the appearance of the area. This would be reduced as landscaping matured but would remain as a moderate-minor adverse effect.

3.8.90. In coming to these conclusions, I have had regard to the ODP, and indicative layout submitted by the Applicant along with the Works Plans which secure certain works at specific locations. In this regard the substation, BESS warehouse, and offices would be located in a relatively central position in the Solar and Energy Storage Park. The Applicant's Planning Design and Access Statement [REP6-004, REP6-006] identifies and explains the approach that was adopted to locate these elements and the alternatives considered. The siting of these elements has regard to the ancient woodland and woodland blocks, the railway line and the topography of the site. The largest elements of the facility are located in a reasonably discreet part of the site, reducing its impact on the character and visual amenity of the area. This has been an element of good design, along with the various exclusion zones and offsets for the panel arrays that have been included. Requirement 5 requires the submission of detailed plans, and the Host Authorities were satisfied that this gave them adequate control in the context of design. Whilst I asked a number of questions with regard to design, I am satisfied that the Applicant has followed good design principles in the formulation and execution in the development of the Proposed Development in accordance with NPS EN-1 (2011 and 2024).

3.8.91. In terms of Glint and Glare, the Applicant submitted a Glint and Glare Assessment [APP-173, APP-174 and APP-175], the conclusion of which I have considered in in my conclusions reached above. During the Examination I sought clarity on the mitigation to prevent adverse effects to ensure consistency with the oLEMP. The oLEMP was updated to increase the height of hedgerows to ensure there were no adverse effects from glint and glare. 7000 Acres [REP2-076] raised concerns with the assessment and issues around the effect on pilots, air traffic control and planes as well as the application of the assessment methodology. The assessment methodology was robust and followed other such assessment undertaken for solar schemes. In the context of the effect on planes I note the advice in 2024 NPS EN-3 that:

- *"Whilst there is some evidence that glint and glare from solar farms can be experienced by pilots and air traffic controllers in certain conditions, there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety. Therefore, unless a*

significant impairment can be demonstrated, the Secretary of State is unlikely to give any more than limited weight to claims of aviation interference because of glint and glare from solar farms."

3.8.92. I have not had any evidence to demonstrate a significant impairment placed before the Examination. I therefore find that the Glint and Glare Assessment is robust and can be relied on and I do not find any significant adverse effects arising from glint and glare.

3.8.93. Overall, I conclude that the Proposed Development would result in material harm to the landscape character of the area arising from an adverse effect on the AGLV and LLCA around the Solar and Energy Storage Park and associated with the scale of the Proposed Development and extent of coverage of the industrial use in an otherwise agricultural landscape.

3.8.94. I conclude that the cumulative effect of the Proposed Development in association with the other solar schemes in the area (Cottam, West Burton and Tillbridge) would lead to additional harm and would through sequential experiences contribute to a greater awareness of solar development in the locality, which would be harmful at a local scale.

3.8.95. The harm would be greatest during construction and would reduce over time as landscaping matures, but there would remain an adverse residual effect on the character of the area.

3.8.96. In terms of the visual amenity of the area, I conclude that the Proposed Development would result in material and harmful effects during construction for local residents, users of PRoW and road users. Again, these would reduce as the proposed planting matured but there would remain areas where the solar arrays would be visible, and this harm would remain during the lifetime of the Proposed Development. I am satisfied that longer distance views from the Jurassic ridge would be limited and not significant due to distance, landform and landscaping.

3.8.97. I am satisfied that the Applicant has sought to take on board principles of Good Design and that these have been successfully integrated into the Proposed Development and secured and have resulted in avoidance and mitigation where necessary and appropriate.

3.8.98. I consider that the harms I have identified, both for the proposed Development and cumulatively, should be afforded moderate weight in the overall balance, as NPS EN-1 (2011 and 2024) indicate that energy schemes are large and likely to result in some effects on the landscape and visual amenity. I am also conscious that my conclusion is based, in part, on the adverse effect on an AGLV, a local designation, which NPS EN-1 (2011 and 2024) advises locally-valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

3.9. MAJOR ACCIDENTS AND DISASTERS

INTRODUCTION

3.9.1. This Section considers the likely safety impacts of the Proposed Development having regard to the battery energy storage system (BESS).

Policy Considerations

NPS

3.9.2. The 2011 NPSs and 2024 NPS are silent on the safety issues arising from battery energy storage systems.

National Planning Policy Framework

3.9.3. The NPPF is silent on the safety issues arising from battery energy storage systems.

Development Plan

3.9.4. Policy S16 of the Central Lincoln Local Plan advises where planning permission is needed from a Central Lincolnshire authority, support will be given to proposals which are necessary for, or form part of, the transition to a net zero carbon sub-region, which could include: energy storage facilities (such as battery storage or thermal storage); and upgraded or new electricity facilities (such as transmission facilities, sub-stations or other electricity infrastructure). The policy goes on to state, any such proposals should take all reasonable opportunities to mitigate any harm arising from such proposals, and take care to select not only appropriate locations for such facilities, but also design solutions (see Policy S53) which minimises harm arising.

The EIA Regulations

3.9.5. Regulation 5 of the EIA Regulations, 2017 requires the significant effects of a Proposed Development to be identified, described and assessed. Where relevant, this includes the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

The Applicant's Case

3.9.6. The Applicant's case in relation to major disasters is set out in Chapter 15 of the ES [APP-024] relating to other Environmental Topics. Section 15.6 deals with Major Accidents and Disasters.

3.9.7. The Applicant identifies a series of potential Major accidents or disasters shortlisted for further consideration. These include Floods, Fire, Road Accidents, Rail Accidents, Flood Defence Failure, Utilities Failure, Mining and Plant disease. The Applicant notes that either those matters listed are dealt with in other chapters or there is no significant risk with the exception of fire which is reviewed and addressed through the design and dealt with in this section of the ES.

3.9.8. During construction and decommissioning the Applicant notes health and safety on site would be managed by the Applicant to mitigate the risk of fire, in line with legislative safety requirements. An Outline Battery Safety Management Plan (oBSMP) [APP-222] has been prepared and is provided with the application. The implementation of the BSMP will be secured by a requirement in the DCO. The fCEMP [REP5-023] and fDEMP [REP5-025] would also include measures to reduce risk of fire during construction and decommissioning, secured by a requirement in the DCO. The Proposed Development is not expected to have an effect on the environment due to the risk of a major accident occurring as a result of fire during the construction and decommissioning phases.

3.9.9. During the operational phase the Applicant notes there is a potential fire risk associated with certain types of batteries such as lithium ion. An oBSMP has been prepared and is provided with the DCO application. The Outline Battery Fire Safety Management Plan fully explores the risks associated with fires from BESS equipment and minimises the impact of an incident during construction, operation and decommissioning of the facility and includes the following:

- Details of the hazards associated with lithium-ion (li-ion) batteries;
- Isolation of electrical sources to enable firefighting activities;
- Measures to extinguish or cool batteries involved in fire;
- Minimise environmental impact of an incident;
- Containment of fire water run-off;
- Handling and responsibility for disposal of damaged batteries; and
- Establishment of regular onsite training exercises.

3.9.10. A summary of the anticipated site-wide safety provisions provided in the oBSMP are as follows:

- Designed, selected and installed in accordance with international guidance, good practice, and related standards;
- Risk assessments will be carried out for the entire system and elements across the project lifestyle;
- The specific location of the BESS, as shown on the Indicative Site Layout Plan ES Figure 2-4 [APP-033] and specified within the Outline Design Principles [REP6-009], has sought to minimise the proximity to receptors of any nuisance with the distance to properties maximised where possible, and as such the BESS is around 500m from any properties;
- Separation distances between components will be selected to minimise the chance of fire spread based on Best Practice, currently represented by National Fire Protection Association 855 (NFPA 855);
- Equipment will, where possible, be selected to be fire limiting, such as the selection of transformer oils with low flammability and the fire resistance of the BESS enclosure;
- In the case of the BESS, it will be designed with multiple layers of protection to minimise the chances of a fire or thermal runway;
- All equipment will be monitored, maintained and operated in accordance with manufacturer instructions;

- 24-hour monitoring of the BESS via a dedicated control room: the monitoring system will automatically alert Lincolnshire Fire and Rescue Service in the event of an incident;
- The BESS will include integrated fire detection with automated suppression systems to deal with electrical fires. Following Best Practice (e.g., NFPA 855 2023) and in line with the Safety Strategy, the build-up of explosive gases will be avoided by gas venting. Fires involving the batteries will be addressed in the Emergency Response Plan, based on best practice;
- The Applicant will have a dedicated emergency response plan (ERP) in place, with consideration of credible plant failure scenarios. The ERP will include 24/7 availability of a Subject Matter Expert (SME); and
- Communication with Lincolnshire Fire and Rescue Service has already commenced and will continue across design and construction phases.

3.9.11. The Applicant has also provided An Unplanned Atmospheric Emissions from BESS report (ES Appendix 15-C [APP-172]).

3.9.12. The Applicant notes that the design of the BESS may change at detailed design stage, when a decision is made to select a supplier, product and battery chemistry. Any selection made will be compliant with the Rochdale envelope principles within Work No. 2 of the Outline Design Principles. The Applicant will update the BSMP and Unplanned Atmospheric Emissions from BESS Report at the detailed design stage to reflect the chosen technology, which would be shared with the Council(s) and the local fire service for approval prior to construction of the BESS. The technology for the BESS has not been confirmed but is likely to be based on lithium-ion as these are most widely used in BESS at this time.

3.9.13. The Applicant argues that in the unlikely event that a fire was to break out in a single cell or module, it is very unlikely that the fire would spread to the rest of the BESS, given the control measures in place. Even if all the systems fail, and a large-scale fire breaks out within enclosures, then the resultant hydrogen fluoride concentration at the closest receptors would not exceed the safe limits.

3.9.14. Minimising the risk of major accidents during construction, operation and decommissioning will be addressed through appropriate risk assessments as required in the fCEMP, fOEMP and fDEMP. The implementation of those plans would be secured via a requirement to the DCO.

3.9.15. Given the nature of accidents and disasters, there is the potential for significant effects if an event does occur, however, the assessment has concluded that the risk of such events occurring is low for the Proposed Development and significant effects on the environment are therefore not anticipated. In the rare possibility that a major accident and disaster does occur, the significance of the effect would correlate to the scale of the major accident and disaster event. The focus is on prevention of major accidents and disasters, and mitigation if an event does occur. Taking into account the good industry practice and additional mitigation measures discussed above, the Applicant considers the risk of accidents and disasters is low.

3.9.16. With embedded mitigation and additional mitigation listed above to reduce the risk of fire and other shortlisted events included in Table 15-10 of the ES, the Applicant does not expect that any cumulative schemes would increase the risk or severity of the residual effects associated with major accidents and disasters affecting the Proposed Development.

Views of IPs

Host Authorities

3.9.17. WLDC's LIR includes consideration of the ES Chapter 15 on Other Environmental Topics and identifies the positive and negative effects as identified by the Applicant in the Chapter including in relation to major accidents and disasters. It also identifies that an Outline Battery Fire Safety Management Plan has been prepared amongst other management plans. It identifies that there is a potential fire risk associated with certain types of batteries such as lithium ion. WLDC has concluded a SoCG with the Applicant and in which it is confirmed that WLDC considers that Requirement 6 should contain a retention clause. WLDC is content with LCC being the named authority but request the Council is named as a consultee. The Applicant confirmed these matters were updated in the preferred DCO and WLDC agreed the position in the SoCG.

3.9.18. The other Authorities LIRs do not raise any issues on battery safety. However, LCC in its RR [RR-148] notes having reviewed the application documents from a Fire Safety perspective the Council is content that the details appear to satisfy the requirements set out in the County Fire Officer standard response to the pre-application stage of the process. LCC further comments that without further specific details, eg detailed plans the response is based very much on the details within the application documents. It requests to continue to be engaged and views sought during the Examination and reserves the right to comment on specific details of the fire strategy, including drafting of suitably worded requirements, to ensure the correct level of information would be available and assessed before any development commences.

3.9.19. LCC concluded a SoCG with the Applicant which addressed a number of points in relation to battery and fire safety which are discussed further below in relation to the Examination. Overall the SoCG confirms that LCC has no areas of disagreement with the Applicant regarding fire safety aspects of the Proposed Development, that it agrees with the Applicant's approach to Hazardous Substances Consent, that it is satisfied with the Outline Battery Safety Management Plan and that it has agreed Protective Provisions with the Applicant to fund the Lincolnshire Fire and Rescue Service to undertake the necessary monitoring to ensure the BESS is in accordance with requirement 6 of the dDCO.

Environment Agency

3.9.20. In its RR [RR-270] the EA welcomed its inclusion as a consultee to Requirement 6 (battery safety management plan).

3.9.21. In its written summary of oral submissions following ISH1 [REP-057] the EA confirmed having reviewed the recording of ISH1 "*we would like to further clarify the point made on Requirement 6 as it was unclear. The Environment Agency may have implied that we 'do not wish to be named' in Requirement 6 but we had intended to reassure the Examining Authority that the Environment Agency does not wish to be an approving authority on Requirement 6. We welcome our inclusion as a named consultee as per point 6.4 in our Relevant Representations [RR-270] and we will be able to input at that stage to assist the approving authority in making a decision in terms of battery safety management for matters within the Environment Agency's remit.*"

Other IPs

3.9.22. Safety issues associated with the BESS technology were raised by a significant number of IPs including parish councils, local groups and residents. In general, most were concerned with the fire and thermal runaway risk posed by the lithium-ion batteries and its potential impact on local residents, the locality in general and wildlife. Roy Clegg provided substantive submissions on fire safety and thermal runaway on a number of occasions and those particularly focussed on this issue are found at [REP-090, REP4-078 and REP7-037].

Examination

3.9.23. During the Examination I raised questions in respect of matters related to the BESS including in relation to fire safety. The issue of safety was also discussed at Issue Specific Hearing 3 and matters related to the inclusion of the BESS in the Proposed Development and as controlled through the DCO were discussed at ISH1 on the draft DCO.

3.9.24. In my ExQ1 [PD-006] question Q1.10.1 through to Q1.10.6 I sought clarification on a number of matters related to the BESS. The issues raised related to the provision of an Emergency Response Plan, who should be involved in approving any of the Requirement details, whether relevant Authorities were satisfied with the oBSMP and Unplanned Atmospheric Emissions from BESS, and whether lithium-ion was a worst-case scenario. None of the Host Authorities responded to the questions. The Applicant in response confirmed that the ERP document stands separate from the Battery Safety Management Plan (BSMP) and that the commitment to provide an ERP is secured through the oBSMP.

3.9.25. In relation to approving authorities the Applicant confirmed it updated the draft DCO at Deadline 1 to ensure LCC is the relevant planning authority for the purposes of Requirement 6. This change was implemented at the request of LCC. Whilst the Applicant does not therefore consider it necessary for Lincolnshire Fire and Rescue Service (LFRS) or Nottingham Fire and Rescue Service (NFRS) to be approving authorities because this responsibility would fall under the statutory remit of LCC, the Applicant does consider it appropriate for LFRS and NFRS to be listed as consultees given the locality and nature of the proposed BESS. For example, paragraph 2.1.1 of the Outline BSMP identifies LFRS as the local fire and rescue service, therefore the

provisions of the BSMP would be of direct relevance. The inclusion of LFRS and NFRS as named consultees ensures that LCC are obliged to consult each party before the BSMP can be determined for approval, ensuring LFRS and NFRS have an appropriate opportunity to influence the BSMP that would ultimately take effect.

3.9.26. In my ExQ3 [PD-013] I requested the Applicant update its document on BESS Frequently asked Questions [REP4-048] to address issues related to the potential fire suppression system and the layout of the BESS area. The Applicant provided an updated version at [REP5-040] which dealt with fire suppression systems and responded to my question on layout in [REP5-047]. It noted that the Indicative Site Layout is for illustrative purposes only and is intended to show that there is sufficient room to accommodate the BESS and likely fire suppression measures within the Works Plan for the BESS (Work No.2). It is based on the Applicant using 240 40ft containerised BESS units at a distance of 2m apart to achieve the total capacity of 500MWh. However, the final design of the BESS (including spacing), would be determined at the detailed design stage. The Applicant further confirmed its confidence that if a spacing of 6m is required, there would be sufficient space within the Works Plan area to accommodate this. Whilst the final system and design is not yet determined and by way of example only, if the Applicant was to utilise a TRINA (Elementa) BESS solution, which involves 20ft containers as opposed to 40ft containers, there would be sufficient space to allow 6m spacing between containers whilst still achieving the proposed 500MWh capacity within a total area of 2.8ha. This is comfortably within the 3.2ha surface area available for the BESS according to the Works Plan for Work No.2.

3.9.27. As noted above I discussed the BESS at various ISHs. In relation to the ISH on the DCO the focus was on the drafting of the DCO and the relevant wording of the Articles and Requirements and as such did not address safety issues *per se*. In ISH3 session 2 [EV-008h] I discussed the BESS including safety issues. The Applicant's written summary of its oral submissions can be found at [REP3-027], LCC's summary can be found at [REP3-037] and WLDC's submissions can be found at [REP3-044]. 7000 acres also provided post hearing submissions [REP3-052] which included comment on this issue.

Conclusions on Major Accidents and Disasters

3.9.28. In relation to these matters I focus on the BESS as the other matters identified in the Applicant's ES are either dealt with under other Sections of this Report or do not result in significant effects.

3.9.29. Significant concern was raised in relation to the safety of lithium-ion batteries and the potential for thermal runaway. This was expressed in many of the initial RRs and subsequent submissions. More detailed submissions were made by 7000 Acres and Roy Clegg around detailed critiques of issues that arose out of the potential for thermal runaway events, the potential consequences, the adequacy of control mechanisms, the illustrative layout deficiencies and the application of appropriate legislative and regulatory controls.

3.9.30. In relation to controls proposed through the dDCO, Requirement 6 secures the submission and approval of a BSMP which must be substantially in accordance with the oBSMP. Requirement 6 further requires that the BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development. The BSMP must be submitted and approved prior to Work no 2 commencing and must be implemented and maintained throughout the construction, operation and decommissioning of the Authorised Development.

3.9.31. The BSMP requires the production and approval of an Emergency Response Plan and the updating of the BMSP and Unplanned Atmospheric Emissions from BESS report as the design of the BESS is progressed and finalised. Consultation on the documents is required with the Local Fire and Rescue Services.

3.9.32. Whilst there are legitimate and particular concerns expressed by IPs around the nature of the technology and whether there is sufficient information available to make sound decisions; I am satisfied that the approach adopted by the Applicant is proportionate and robust.

3.9.33. The final design of the BESS, its chemistry, design and layout have not been finalised. This is not unusual and in the other solar energy schemes that have been consented similar approaches with securing battery safety management plans have been an accepted as an appropriate response.

3.9.34. The Host Authorities have not raised detailed concerns or objections to the principle of the battery storage system with LCC seeking to ensure sufficient capacity is available within LFRS to enable it to undertake the functions necessary to support the BSMP being effective. This has been agreed with the Applicant as confirmed through the SoCG [REP6-022] and the Protective Provisions at Part 13 of Schedule 14 to the rDCO in respect of Lincolnshire Fire and Rescue Service which provides for financial contributions to support the LFRS visiting the site and undertaking work in assessing the BSMP and its implementation. WLDC in its written summary of oral submissions at ISH3 also confirmed that it noted the detailed discussions regarding the operation and safety risks associated with the BESS and referred to its response to the ExQ1. This confirmed that WLDC does not raise an objection on this issue, subject to the inclusion of an appropriate Battery Safety Management Plan (currently Requirement 6 in the dDCO).

3.9.35. In terms of matters affecting the wider environment EA did not raise any objections and confirmed that it welcomed its inclusion as a consultee in Requirement 6.

3.9.36. Mr Clegg raises issue related to whether other legislative or regulatory matters apply. In this regard the Applicant has stated until its final design and chosen system it will not know the quantities of any hazardous substances that would be held on site and therefore whether

other approvals would be required. It has confirmed that once these matters are clarified it will review the position and apply for any necessary approvals at the point. LCC in its SoCG agreed with this position. I am satisfied that this is a reasonable and proportionate approach.

3.9.37. Mr Clegg raises issues around fire suppression and firefighting including the amount of water that would be required and the layout and separation of the various components of the proposed system. The Applicant in its FAQ document [REP5-040] on the BESS and in response to my ExQ3 questions sets out at [REP5-047] the design parameters that would be taken into account in the layout of the BESS and that it is confident that there is sufficient space identified within the ODP and parameters plan to accommodate the BESS and any associated water requirements including storage. The Applicant confirms that there is sufficient space for water storage (if that is the approach adopted) to the required level suggested by LFRS who have advised that a water supply with a flow of 1900 litres per minute or 32 litres per second would be required on site for indicative design purposes. This is in line with the NFCC guidance which says that provisional firefighting supplies "*should be capable of delivering no less than 1,900 litres per minute for at least 2 hours*". Whilst I accept that Mr Clegg suggests that much greater amounts of water would potentially be required, I give significant weight to the advice of the LFRS and the NFCC advice.

3.9.38. Overall, I am satisfied that the rDCO contains sufficient measures to secure and control battery safety through the BSMP. I consider that the oBSMP is a robust and sufficiently flexible document to ensure that a final BSMP and ERP are provided and that through consultation with the relevant FRS's in the area these would be effective documents that would mitigate the risk. The conclusion of Protective Provisions in relation to LFRS gives further confidence that they would be provided with sufficient resource to effectively monitor and engage with the operators of the site such that fire safety and concerns of risk to the population and environment are adequately mitigated. As noted previously the NPS do not address battery fires or thermal runaway creating major accidents or disasters. Given the nature of the potential for thermal events and fires within the Proposed Development the Applicant, Host Authorities or FRSs did not raise substantive issues around cumulative effects and I have no evidence before me that would lead me to disagree with this position. Overall, the matter does not affect the planning balance as there is neither a negative or positive overall effect.

3.10. NOISE AND VIBRATION

Introduction

3.10.1. This Section addresses the noise effects of the Proposed Development. This focuses on sensitive receptors defined as buildings whose occupants may be disturbed by adverse noise and vibration levels and structures that are sensitive to vibration. The consideration addresses matters related to construction, operation and decommissioning. The Scoping Opinion provided by the Inspectorate scoped out vibration effects from

operation and advised that vibration effects for construction and decommissioning should be considered where they are likely to result in significant effects. I have therefore also considered these matters in this section.

Policy Considerations

National Policy Statements

3.10.2. Section 5.11 of 2011 NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England (NPSE). The national policy recognises that excessive noise can have impacts on the quality of human life, health and the use and enjoyment of areas of value. Noise can also have adverse impacts on wildlife and biodiversity.

3.10.3. With respect to the assessment of noise, paragraph 5.11.4 of 2011 NPS EN-1 advises that where noise impacts are likely to arise NSIP applications should be accompanied by noise assessments. Factors which will determine noise impacts include the operational noise from a development and its characteristics, the proximity of a development to noise sensitive premises and the proximity to quiet places.

3.10.4. Paragraph 5.11.8 of 2011 NPS EN-1 advises projects should demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping or noise barriers to reduce noise transmission.

3.10.5. 2011 NPS EN-1 also advises that development consent should not be granted unless proposals avoid significant adverse impacts and mitigate and minimise other adverse noise impacts for health and the quality of life. Paragraph 5.11.12 advises noise mitigation measures may include engineering, layout and administrative measures.

3.10.6. 2011 NPS EN-5 sets out national policy for noise and vibration considerations for electricity networks infrastructure. It recognises that audible noise can arise from the operation of substation equipment, such as transformers, given its tendency to emit a low frequency hum.

3.10.7. Paragraph 2.9.10 of 2011 NPS EN-5 advises that for decision making there is a need to ensure that the relevant noise assessment methodologies have been used by applicants and that appropriate mitigation options have been considered and adopted. Where applicants can demonstrate that appropriate mitigation measures would be in place the residual noise impacts are unlikely to be significant.

3.10.8. These principles in relation to noise are carried forward into 2024 NPS EN-1 and 2024 NPS EN-5 respectively. In addition, 2024 NPS EN-3 states that proposals for renewable energy infrastructure should demonstrate good design to mitigate impacts such as noise (paragraph 2.5.2). In respect of Solar Farms 2024 NPS EN-3 also notes that the Secretary of State is unlikely to give any more than limited weight to traffic and

transport noise and vibration impacts from the operational phase of a project (paragraph 2.10.162).

Nose Policy Statement for England

3.10.9. The NPSE seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It provides guidance on defining 'significant adverse effects' and 'adverse effects' by reference to the No Observed Effect Level (NOEL), Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL).

The National Planning Policy Framework (NPPF)

3.10.10. The NPPF at paragraph 191 advises decisions should ensure new development takes account of likely effects of pollution on health living conditions and the natural environment. It further states in doing so they should, amongst other matters, mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Local Development Plan Policies

3.10.11. Local Plan policies include generic references to the need to protect the amenity of adjoining neighbours and uses from impacts including noise and vibration from new development including transport related noise which would include construction, operational and decommissioning activity.

The Applicant's Case

3.10.12. The Applicant's case on Noise and Vibration is set out in Chapter 11 of the ES [APP-020] which is supported by additional appendices including on Acoustic terminology [APP-156], a baseline Noise Survey [APP-157], Noise Modelling [APP-158] and a summary of non-significant effects [APP-159]. It is further supported by additional figures appended to the ES.

3.10.13. A study area is defined in relation to the Solar and Energy Storage Park and for the GCC, which range between 300m and 500m. Sensitive receptors are identified at tables 11-1 and 11-2 of the ES chapter 11 which are predominantly residential receptors but also include Lea Fields Crematorium. Locations of Horizontal Directional Drilling (HDD) activities have not yet been finalised. Consequently, to provide an indication of potential noise effects due to HDD activities, noise has been calculated by taking the distance from an avoidance area boundary as shown in ES Volume 3: Appendix 2-B Grid Connection Construction Method Statement [APP-114] to the nearest sensitive receptor.

3.10.14. For the purposes of assessing noise and vibration, the construction programme has been summarised into four scenarios that represent high Noise Generating Activities (NGA). The Assessment identifies LOAEL and SOAEL for construction noise and vibration in relation to the appropriate

British Standards and in relation to traffic noise with regard to the Design Manual for Roads and Bridges. Decommissioning impacts are assessed as being similar or less than noise effects during the construction phase by the Applicant and the assessment is based around the construction phase which is used as representative (but the Applicant considers is likely an overestimate for decommissioning) in the context of similar effects as the construction effects are the likely worst-case scenario. Operational effects are assessed again in the context of BS guidance.

3.10.15. Table 11-11 in the ES sets out the baseline noise monitoring results at previously agreed monitoring locations. Embedded mitigation is taken into account as it represents Best Practical Means (BPM) and is secured through the fCEMP [REP5-023] and Framework Decommissioning Environmental Management Plan (fDEMP) [REP5-025]. Consideration has been given to traffic routing, timing and access points to the Proposed Development to minimise noise impacts at existing receptors as detailed in ES 13: Transport and Access [REP4-012]. Management of HGVs on the highway network would be managed through the fCTMP [REP6-011 and REP6-011a].

3.10.16. Plant to be used in the Proposed Development has not yet been finalised but a conservative approach has been adopted with assessing plant. Although the Works Plans [CR1-009] and indicative layout have been optimised to minimise noise levels at sensitive receptors, there is a requirement to retain some flexibility on where infrastructure would be located on-site. Consequently, if there is a decision in the future to move noise generating infrastructure closer to sensitive receptors than shown in ES Volume 2: Figure 2-4 [APP-033], the Applicant has made a commitment that noise at sensitive receptors would be no higher than the levels presented in Section 11.10 (specifically Table 11-17) of the ES. The measures to achieve this are discussed in Section 11.9 and secured in the Framework Operational Environmental Management Plan (fOEMP) [REP2-035].

3.10.17. The Applicant concludes that the SOAEL would only be exceeded at one sensitive receptor (at 66 High Street), and this is in respect of construction activities in the GCC and that there are only a limited number of locations where the levels would be between LOAEL and SOAEL. In terms of HDD activities, it is concluded that SOAEL would only be exceeded if night-time working occurs and at receptors within 200m of HDD activities. The Applicant identifies that HDD activities have the potential to result in significant noise effects at Marton Grange Barn, Stow Park (receptor AA12) if they extend into the night-time period.

3.10.18. For all works that are undertaken outside of core work periods, the Applicant states a Section 61 consent will need to be obtained by the principal contractor. This will be agreed with the local planning authority and contain details on the methodology, mitigation, communication strategy and monitoring. The hierarchy of mitigation measures for HDD activities listed in paragraph 11.9.10 of the ES would ensure that HDD activity noise effects would be reduced as far as reasonably practicable. This hierarchy includes the use of acoustic fencing which, if required,

could provide 10 dB of noise attenuation. Consequently, noise from HDD activities at AA12 would reduce to 51 dB LAeq,T at worst, which is below the SOAEL. As such, noise effects due to HDD activities are considered by the Applicant to be not significant.

3.10.19. In terms of vibration the values for surface plant are also below the 1.0 mm/s SOAEL (see Table 11-7) where it is likely that vibration in residential environments would result in complaints but can be tolerated if prior warning and explanation is given to residents. In terms of effects for construction and decommissioning for Peak Particle Velocity (PPV) vibration levels exceeding 1.0 mm/s, prior warning will be provided on the timings and duration of vibration generating activities. This will be secured through the fCEMP [REP5-023] and fDEMP [REP5-025], which will be secured through the DCO. Given the short duration of these activities affecting individual receptors, prior warning is considered sufficient to offset significant effects according to the Applicant.

3.10.20. For construction noise traffic the Applicant concludes noise calculations indicate that construction traffic would result in a negligible noise effect on all road links with the exception of Marton Road, B1241 High Street and Headstead Bank. At Headstead Bank, changes in traffic noise are equivalent to a Moderate Adverse effect; however, there are no sensitive receptors along this road to be affected by changes in noise, so this effect on receptors is not considered to be significant. On Marton Road and B1241 High Street construction traffic is calculated to result in a minor adverse noise effect. Consequently, changes in noise due to construction traffic on all assessed road links are considered by the Applicant to be not significant.

3.10.21. In terms of operational noise, the Applicant uses the night-time noise levels at sensitive receptors as these are the most onerous assessment criteria. At all receptors, the Applicant identifies that the LOAEL is exceeded but the SOAEL is not. The Applicant, however, notes that the NPSE states…

"…all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development. This does not mean that such adverse effects cannot occur".

3.10.22. The Applicant concludes all reasonable steps to reduce noise are covered in the embedded mitigation section of Chapter 11 of the ES and have been applied in noise predictions. Consequently, NPSE requirements are complied with through provision of embedded mitigation.

3.10.23. Overall, the Applicant concludes that no significant noise or vibration effects are predicted during the construction phase or the operational phase.

3.10.24. In terms of operational effects, the Applicant judges that at distances of greater than 500m any interaction of noise emissions from multiple developments would be attenuated, such that there would normally be no combined effect. Based on the distances from key project components

to cumulative developments and requirements to implement BPM, it is considered that any overlapping of construction phases between the Proposed Development and the other nearby development schemes would not result in any cumulative effects at common noise-sensitive receptors. Predicted construction and decommissioning noise effects from the Proposed Development are below the LOAEL, and it is considered that cumulative effects of construction noise would remain unchanged from the residual effects and, therefore, remain not significant.

3.10.25. There is the potential for cumulative effects through the shared use of the GCC with other schemes in the ES. These are identified as Cottam and West Burton Solar Projects which were at an advanced stage at the time of submission, and potentially subsequently Tillbridge. The Applicant is of the view that if these were undertaken sequentially then there would be no additional cumulative effects, as the works would not be undertaken at the same time, albeit there may be an extended period of disruption for parties related to each of the schemes. In the context of if activities were undertaken concurrently, the Applicant states the assessment was undertaken on the basis of the effects being assumed at the closest boundary to residential receptors, so the residual effect would be unchanged, however, the duration may be extended. The extended duration including out of hours activities which may affect the level of mitigation and would be addressed through the Section 61 process.

3.10.26. There is not expected to be any overlap between construction traffic routes with other schemes with the exception of West Burton Solar Project and Cottam Solar Project where any overlaps are likely to be primarily confined to wider strategic routes, which have high density traffic flows and are not sensitive to changes in noise as a result of construction traffic. There is not expected to be any noticeable change in vehicle numbers along the GCC attributed to the cumulative schemes when considered alongside the Proposed Development. Consequently, cumulative construction traffic noise would remain unchanged from the residual effects and, therefore, remain not significant. Further work was undertaken in terms of cumulative traffic movements through the Joint Report on Interrelationships between Nationally Significant Infrastructure Projects [REP6-041], which at Appendix D includes a Technical Note on Cumulative Impacts on Traffic. That note concludes that:

"… The cumulative assessment within Chapter 13: Transport and Access of the Gate Burton Energy Park ES concluded that no projects identified in ES Volume 3: Appendix 5-A [EN010131/APP/3.3] were considered (in combination) to impact any of the receptors identified in the assessment and that the effects were not significant. Following a further review of the potential cumulative impacts of these other schemes, the findings of Chapter 13: Transport and Access of the Gate Burton Energy Park ES are considered to remain unchanged".

Views of IPs

Host Authorities

3.10.27. In WLDC's LIR [REP-053] it sets out a summary of the main points arising from the ES. These include:

- The monitoring locations and selected sensitive receptors around the solar farm are reasonable although it would have been useful to include Pembroke House (north of ML2) as a sensitive receptor.
- The construction phase assessments are considered to be acceptable, however, clarifications are required.
- Table 11-17 shows that the rating level is more than 10 dB above the background sound level at several sensitive receptors (R2, R3, R4, R10, R11, R12, R15, R18 and R19), which cannot be ignored. In a rural area, changes of this magnitude are likely to be perceptible to local residents, who may perceive that the character of the local area is changing. Further information on contextual factors is required to confirm the significance, which may include reference to daytime impacts.
- The main approach to mitigation is the use of best practicable means, daytime working hours, stakeholder liaison, and implementation of a construction traffic management plan and construction noise monitoring. These are reasonable general measures for controlling construction activity noise and vibration and construction traffic. However, as temporary construction noise barriers are not included with the list of best practicable means and several sensitive receptors were predicted LOAEL exceedances from NGA3, it is recommended that further consideration is given to the use of temporary noise barriers as a noise control measure.

3.10.28. BDC in its LIR [REP-038] notes that it is understood that a detailed CEMP will be submitted prior to construction. It is considered that it is inevitable that the construction of such a project is going to cause an increase in noise and disturbance to local amenity; however, it is also accepted that this will be temporary in nature and once the cabling is in place this impact would be significantly reduced. The examiner is requested to ensure that the disruption to the local community in terms of noise and disruption is minimised so that it is in accordance with Policy DM4.

3.10.29. LCC's LIR [REP-043] draws attention to the matters to be addressed in the NPS and in policy DM1 from WLDC Core Strategy which requires the impacts are acceptable on the amenity of sensitive neighbouring uses (including local residents) by virtue of matters such as noise, dust, odour, shadow flicker, air quality and traffic.

3.10.30. NCC's LIR [REP-045] points to policy SO3 of Waste Core Strategy which seeks to protect local amenity and quality of life from the possible impacts of waste management such as dust, traffic, noise, odour, visual impact and address local health concerns.

Other IPs

3.10.31. Noise concerns were raised by a number of IPs in the RRs, WRs and responses to matters raised during the Examination. This included amongst other matters issues related to noise from construction, construction traffic, noise arising from operational use potentially from the BESS and the Substation and other electrical equipment. Concerns were expressed about the effects of constant hum background noise for local residents and users of the surrounding area including local byways.

Examination

3.10.32. My ExQ1 [PD-006] questions included a number of questions to the Applicant and various parties to seek understanding of the Host Authorities' positions and methodology for the Assessments made in the noise and vibration chapter and in relation to specific matters related to HDD activities and the proposed section 61 approach.

3.10.33. In response to my questions directed towards the Applicant it responded in [REP2-041] and confirmed that it was not a requirement to apply for consent under section 61 of the Control of Pollution Act 1974 (CoPA). If the Applicant did not, then it would be open to the Local Authority to serve a notice pursuant to Section 60 of that Act specifying actions to control noise if it considers it appropriate to do so, in accordance with the terms of that provision. However the Applicant also noted that in any case, the Outline Design Principles (the latest version submitted being [REP6-009]) control noise to residential properties via identification of the Power Conversion Unit (PCU) Exclusion Zones (ES Figure 11-2) with these Exclusion Zones included within the Parameter Plan submitted at Deadline 2 and appended to the Design Principles. Noise is further controlled via the mitigation secured in Table 3-6 (Noise and Vibration) of the fCEMP (Requirement 12), Table 3-6 (Noise and Vibration) of the fOEMP (Requirement 13) and Table 3-6 of the fDEMP (Requirement 19). The Applicant also amended D2 in the fCEMP to confirm acoustic fencing would be used to protect sensitive receptors if the night-time SOAEL was exceeded.

3.10.34. BLDC in its Response to EXQ1 [REP2-047] confirmed that it agreed with the identified zones of influence and sensitive receptors included in the Applicant's assessment and with the assessment methodology and conclusions. LCC [REP2-049] made no comment on the assessment but confirmed it accepted that the zones of influence and sensitive receptors were representative. NCC [REP2-053] deferred to BDC and did not comment. WLDC [REP2-057] agreed that the identified Zones of Influence and Sensitive Receptors set out in table 11-2 and locations set out in Figure 11-1 are acceptable. It further noted that construction phase assessments are generally considered to be acceptable, however, clarifications were required on a number of specific points.

3.10.35. In my ExQ2 [PD-009] I requested 7000 Acres identify any limits on noise that they had generically requested in their [REP3-049]. In [REP4-067] they referred to the NPSE and definitions of LOAEL and SOAEL.

3.10.36. During the Examination concern was also raised in relation to the use of article 7 in the dDCO related to statutory nuisance. WLDC amongst others raised concern that the Applicant sought to remove the ability to bring statutory nuisance proceedings under the EPA 1990 in respect of noise. This is addressed more fully below in relation to the draft DCO but the Applicant has submitted a Statutory Nuisance Statement [APP-184] and in its Explanatory Memorandum [REP6-027] sets out its justification for the position. In effect, the Applicant argues that given the control mechanisms engaged with and secured through the dDCO as referred to above these would ensure that there is unlikely to be a statutory nuisance arising either from the development or in combination with other schemes. WLDC in its final statement [REP7-003] is concerned at the removal of the potential for local residents to raise such a claim and particularly given the complexity associated with cumulative effects that might arise from activities from a number of parties and the ability to identify the appropriate party.

Conclusions on Noise and Vibration

3.10.37. The Outline Design Principles [REP6-009] set out the constraints and parameters within which any scheme must come forward. The Parameters include exclusion zones and separation from sensitive receptors and in association with the various management plans including the fCTMP [REP6-011 and REP6-011a], the fCEMP [REP5-023], the fOEMP [REP2-035] and the fDEMP [REP5-025] which are secured through requirements 14, 12, 13 and 19 respectively, this would provide sufficient safeguards to ensure that there would be no residual significant effects resultant from noise.

3.10.38. In terms of construction noise these documents provide adequate safeguards to ensure the impacts would be below thresholds and not exceed SOAEL levels. Where there is the potential of effects above SOAEL there are mechanisms in place to ensure the threshold is not breached. This refers to both the Solar and Energy Storage Park and the GCC. In the context of operational effects whilst there would be residential receptors affected above LOAEL levels these would not be above SOAEL levels and the Applicant has committed to using BPM to reduce any effects, mitigation measures are secured through the fCEMP and fDEMP secured in the rDCO. Given the assessment is taken against a worst-case scenario of night-time noise levels this is taken to a be a robust and reasonable assessment and the NPSE indicates that in such circumstances all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life, while also taking into account the guiding principles of sustainable development. This does not mean that such adverse effects cannot occur.

3.10.39. Construction traffic effects are concluded to not have a significant adverse effect and the Host Authorities did not provide any substantial evidence to suggest this was not the case. Although there was dispute about vehicle numbers and traffic levels and in particular related to potential cumulative effects, the Applicant's technical note [REP6-041] demonstrates that the numbers and levels of traffic movements would

not breach appropriate industry thresholds and that on the basis of their assessment the conclusions reached in the ES remained valid. The Applicant also adjusted the fCTMP to include additional wording proposed to require the detailed CTMPs which are to be submitted to the highway authorities to include certain matters which would further address concerns and enable the highway authorities to have greater control. The Applicant in the fCTMP also commits to undertake further assessments should the level of traffic movements at the time of the preparation of the detailed CTMPs require it. On this basis I am satisfied that there are sufficient safeguards in place to address and ensure that there are no significant adverse effects resulting from noise from construction traffic

3.10.40. The construction effects are similar if not greater than the decommissioning effects and the fDEMP includes similar safeguards as the fCEMP. Overall, the decommissioning effects should therefore also be reasonably constrained.

3.10.41. In terms of vibration, operational effects were scoped out of assessment and there were no significant concerns raised by any IPs about this. In terms of construction activities, those matters assessed were contained below LOAEL levels and there were no significant effects identified. None of the Host Authorities raised significant issue with these conclusions which are accepted.

3.10.42. Any effects that arise in terms of construction or decommissioning would be temporary and the assessment indicates would be short term and could be reasonably managed by way of BPM, exclusion zones, appropriate administrative and management approaches and through effective communication. These are all matters secured in the ODP [REP6-009] and appropriate management plans and which are secured through Requirements attached to the dDCO.

3.10.43. Accordingly, I conclude that the application accords with the Government's policy on noise and vibration as set out in 2011 and 2024 NPS, the NPSE and NPPF. Given my conclusions it would also accord with local planning policy. Accordingly, I consider the effect would not result in significant adverse effects and would not affect the overall planning balance.

3.11. SOCIO-ECONOMIC AND LAND USE (INCLUDING AGRICULTURAL LAND AND BEST AND MOST VERSATILE LAND (BMV))

Introduction

3.11.1. This section addresses the socio-economic and land use effects of the Proposed Development. This includes consideration of employment generation, Gross Value Added (GVA – which is the value added generated by any unit engaged in the production of goods and services), Public Rights of Way (PRoW), agricultural land, and local amenities and land use. Mineral sterilisation was not a significant issue in the examination and I deal briefly with this in my conclusions to this section

below. Furthermore, access to health services and facilities is considered in more detail in Section 3.7 of this Report above.

Policy Considerations

National Policy Statements (NPS)

3.11.2. Section 5.12 of 2011 NPS EN-1 deals in detail with the socio-economic effects of major energy infrastructure and requires applicants to include in their application an assessment all relevant socio-economic impacts including:

- the creation of jobs and training opportunities.
- the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities.
- effects on tourism.
- the impact of a changing influx of workers during the different construction, operation, and decommissioning phases of the energy infrastructure, and
- cumulative effects.

3.11.3. 2011 NPS EN-1 also notes that PRoWs, national trails and other rights of access to land are important recreational facilities for walkers, cyclists and horse riders. It makes clear that applicants should take appropriate mitigation measures to address adverse effects on rights of way.

3.11.4. 2011 NPS EN-1 also makes clear (at paragraph 5.10.9) that applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.

3.11.5. 2024 NPS EN-3 notes that considering the likely extent of solar sites, it is possible that proposed developments may affect the provision of local footpath networks and PRoW. It indicates that it should be the applicant's intention, where practicable and safe, to keep all PRoW that cross the proposed development site open during construction and to protect users where a public right of way borders or crosses the site. Developers are encouraged to design the layout and appearance of the site to ensure continued recreational use of PRoW, and to minimise as much as possible the visual outlook from existing footpaths.

3.11.6. In relation to BMV 2011 NPS EN-1 states that applicants should seek to minimise impacts on BMV agricultural land (defined as land ALC grades 1, 2 and 3a) and preferably use land in areas of poorer quality (ALC grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. It also indicates that applicants should identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed.

3.11.7. Furthermore, 2011 NPS EN-1 states that schemes should not be sited in areas of BMV agricultural land without justification, but that little weight should be given to the loss of poorer quality agricultural land.

3.11.8. 2024 NPS EN-1 contains similar advice to that identified above and also advises that the Secretary of State should ensure that applicants do not site their scheme on BMV agricultural land without justification. It advises where schemes are to be sited on BMV agricultural land the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

3.11.9. A similar approach is taken by 2024 NPS EN-3 which notes where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible. 'Best and Most Versatile agricultural land is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification'. It goes on to advise whilst the development of ground mounted solar arrays is not prohibited on BMV agricultural land, or sites designated for their natural beauty, or recognised for ecological or archaeological importance, the impacts of such are expected to be considered and are discussed under paragraphs 2.10.73 – 92 and 2.10.107 – 2.10.126.

3.11.10. At paragraph 2.10.145 2024 NPS EN-3 advises The Secretary of State should take into account the economic and other benefits of the BMV agricultural land. The Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.

3.11.11. Paragraph 2.10.127 in relation to mitigation draws attention to The Defra Construction code of practice for the sustainable use of soils on construction sites which provides guidance on ensuring that damage to soil during construction is mitigated and minimised. Mitigation measures focus on minimising damage to soil that remains in place, and minimising damage to soil being excavated and stockpiled. The measures aim to preserve soil health and soil structure to minimise soil carbon loss and maintain water infiltration and soil biodiversity.

National Planning Policy Framework (NPPF)

3.11.12. The NPPF advises that planning policies and decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the BMV agricultural land, and of trees and woodland. The Glossary identifies BMV as land in grades 1, 2 and 3a of the Agricultural Land Classification. It also advises that planning policies and decisions should recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production.

Written Ministerial Statement March 2015

3.11.13. A Written Ministerial Statement dated March 2015 as referenced above is also an important and relevant matter and which makes clear that any

proposal involving BMV agricultural land would need to be justified by the most compelling evidence.

Local Planning Policy

3.11.14. Policy S67 of the Central Lincolnshire Local Plan 2023-2043 requires proposals to protect the Best and Most Versatile agricultural land so as to protect opportunities for food production and continuance of agricultural economy. Significant development resulting in the loss of BMV will only be permitted if the criteria of the policy are met.

3.11.15. S48, S54 and S59 relate to walking and cycling infrastructure, health and wellbeing and Green and Blue infrastructure and are relevant in respect of issues related to PRoW.

3.11.16. Policy DM10 of the Bassetlaw Core Strategy 2011 advises that the Council will be supportive of proposals that seek to utilise renewable and low carbon energy to minimise CO2 emissions. Proposals for renewable and low carbon energy infrastructure will also need to demonstrate that they: will not lead to the loss of or damage to high-grade agricultural land (Grades 1 & 2), amongst other matters.

The Applicant's Case

3.11.17. The Applicant's case is set out in ES Chapter 12: Socio-Economics and Land Use. This chapter was updated at Deadline 4 following my request in ExQ2 to remove references to sheep grazing maintaining an agricultural use of the land as the Applicant confirmed there was no commitment secured in the draft DCO to ensure this would happen. The amended chapter is found at [REP4-010].

3.11.18. The Chapter is supported by:

- Figure 12-1: Agricultural Land Classification [APP-099];
- Appendix 12-A: Legislation and Planning Policy [APP-160];
- Appendix 12-B: Summary of Non-Significant Effects on Socio-Economic and Land Use Receptors [APP-161]; and
- Appendix 12-C: Agricultural Land Classification Report [APP-162].

3.11.19. After identifying the study areas for each of the matters to be considered and the methodology employed to assess impacts and identify the significance of effects, the Applicant identifies the potential effects.

3.11.20. The potential affects relate to generation of employment within the study area, with consideration of leakage (% of jobs that benefit those residents outside the Scheme's identified target area), multiplier effect, and displacement; increased GVA at a local and national level in the construction sector due to increased employment and impacts on 7 PRoW where permanent land take is required.

3.11.21. Potential impacts to agricultural land include the loss of land to solar panel infrastructure and any additional buildings or infrastructure required to construct the Proposed Development, both temporarily and permanently. This includes some areas of BMV land, and potential

severance within agricultural holdings or access restrictions to agricultural infrastructure. The Applicant identifies that the Solar and Energy Storage Park contains 73.6ha of surveyed BMV and 6.8ha of estimated (desk based identified) BMV land, of which approximately 2ha will be permanently lost due to construction of the substation and permanent vegetation planting on site. The BMV land in the northwest of the Proposed Development (6.2ha) is a Solar Panel Exclusion Zone, and therefore could continue to be used for agriculture. The remainder and vast majority of BMV land affected (approximately 73ha) will be used temporarily and would be reversible following decommissioning. The Applicant further notes the GCC contains 74.8ha of estimated BMV, all of which will be returned to agriculture after construction.

3.11.22. In terms of agricultural land, the land required for construction of the GCC could be restored to enable agricultural use in this area during operation. BMV considerations were used to inform the siting of elements of the Proposed Development, for example, the location of the BESS was selected to minimise the impact on BMV whilst balancing surface water, flood risk and visual considerations.

3.11.23. In terms of local amenities, the Applicant identifies that impacts can arise where land is required temporarily and/or permanently, that is used for private property or housing, community land and assets, including land or assets used for recreation (this comprises impacts to open space and blue space e.g. play space and rivers), development land and businesses.

3.11.24. The Applicant identifies embedded mitigation measures at Table 12-20 in Chapter 12 [REP4-010].

3.11.25. In addition, the Applicant has provided an Outline Soil Management Plan (OSMP), the latest version of which can be found at [CR1-040] which takes account of the additional land incorporated at the Change Request.

3.11.26. The Applicant's conclusions on likely significant effects can be summarised as follows:

3.11.27. The direct, indirect and induced employment, expenditure and upskilling created from the construction of the Proposed Development must be judged in the context of the labour pool of construction workers in the Study Area (60-minute travel area) (106,000). Taking this into account, the impact of construction employment generation in the Study Area has been assessed as temporary low beneficial, which results in a medium-term temporary minor beneficial effect. This is not considered significant.

3.11.28. Analysis of the hotel, bed and breakfast and inns accommodation sector has been undertaken to assess the likely capacity against the demand from the potential peak construction workforce (400), and indicates, considering existing seasonal demand and typical occupancy, that capacity is sufficient, and that the workforce can be accommodated within existing provision within a 30-minute drive time radius of the site. Further, analysis of a 60-minute drive time demonstrated at peak workforce employment and peak occupancy levels, 100% of the

Proposed Development's peak construction workers could be accommodated within both a 30-minute and 60-minute drive time of the site. Given this, the Applicant concludes there would be no effect on the hotel, bed and breakfast, and inns accommodation sector arising from the Proposed Development.

3.11.29. The impact of direct GVA generation from the construction phase on the economy within the Study Area has been assessed as medium-term temporary low beneficial, which results in a temporary minor beneficial effect. This is not considered significant. The impact on the national economy as represented by the total GVA generated has been assessed as medium-term temporary low beneficial, which results in a temporary minor beneficial effect. This is not considered significant.

3.11.30. The PRoW are predominantly used for recreational purposes and form part of a wide network of PRoW in the surrounding area as shown in ES Volume 2: Figure 13-8. No permanent closures would result from the Proposed Development and diversions would allow any routes affected during construction to remain open. Due to the limited scale of impacts upon PRoW, these effects are assessed to be low adverse, which results in a minor adverse effect. This is not considered significant.

3.11.31. During the construction phase, temporary and permanent use of agricultural land will occur. The total area of agricultural land required during the construction period for the Proposed Development (including the GCC) would be approximately 767ha (the total area of the Order limits was identified as 824ha but 57ha are identified as non-agricultural).

3.11.32. The Proposed Development has been designed to take into account the quality of agricultural land such as positioning the permanent infrastructure (the substation and the BESS) to minimise use of BMV land as far as practicable whilst balancing surface water, flood risk, access, safety and visual considerations. Permanent land take at the site of the substation and planting is estimated at a maximum of 2ha of grade 3a land.

3.11.33. According to Defra, the East Midlands has 1.2 million ha of farmland (England as a whole has 9.2 million ha of farmland). In 2021, West Lindsey was reported as having 106,474ha of farmland. The 824ha required for construction constitutes 0.8% of the total farmland in West Lindsey and <0.01% of arable farmland in East Midlands.

3.11.34. The East Midlands contains 618,789 ha of BMV (based on the Post 1988 dataset in England). The Proposed Development will utilise approximately 155.2ha of BMV or estimated BMV for construction, and approximately 80.4ha of BMV or estimated BMV during operation (as the area of land within the GCC is required for construction only and will be restored to enable agricultural use in this area during operation).

3.11.35. Of the 80.4ha BMV required during operation, up to an assumed maximum of 2ha is lost permanently due to not being returned to

agricultural use following decommissioning, and 6.2ha is within a solar exclusion zone and therefore could remain in agricultural use throughout operation. The remaining 73ha would be used for ecological mitigation (species rich grassland) or under solar panels.

3.11.36. The BMV being used by the Proposed Development during its operation represents 0.01% of the regional BMV. The BMV not being returned to farmland at the end of the Proposed Development - represents <0.001% of the region's BMV.

3.11.37. The effect of the Proposed Development on BMV agricultural land is assessed to be low adverse which results in a minor adverse effect. This is not considered significant.

3.11.38. In terms of local amenities, the Applicant concludes, taking into account the residual effect assessment results of the air quality, noise, traffic and visual assessments, there are no residents, businesses or community facilities that would likely experience a significant effect on their amenity during construction from effects acting in combination. There are no planning applications, permissions or allocations affected by land required for the construction of the Proposed Development and thus no effects have been assessed.

3.11.39. The Applicant states there are no significant effects in relation to Socio-Economics and land use expected during the construction phase of the Proposed Development.

3.11.40. The increase in employment during the operational stage would be marginal and therefore the impact has been assessed as permanent, very low beneficial which results in a permanent negligible effect, which is not considered significant. As no closures of PRoW are proposed, the impact on users of PRoW has been assessed as very low which results in no effect. In a worst-case scenario, where temporary diversions are required, this is concluded to result in a temporary negligible effect which is not considered significant.

3.11.41. Effects on agricultural land use would occur as long term arising from the construction and continue across the lifetime of the Proposed Development and hence have been assessed in the construction phase. As summarised at paragraph 12.10.48 of Chapter 12 of the ES [REP4-010] this is assessed as a minor adverse effect which is not considered significant.

3.11.42. Taking into account the residual effect assessment results of the noise, traffic, air quality and visual assessments, there are no residents, community facilities or businesses that would likely experience a significant effect on their amenity during operation. Therefore, there are no impacts arising from the Proposed Development on local amenities which results in no effect. There are no planning applications, permissions or allocations affected by land required for the operation of the Proposed Development and thus no effects have been assessed.

3.11.43. The Applicant states there are no significant effects expected during the operational phase of the Proposed Development.

3.11.44. The estimated duration of the decommissioning period is expected to take between 24 and 48 months, similar to that of the construction period of 36 months. Therefore, the likely effects will be of a medium-term temporary nature. The impact of decommissioning employment generation in the local economy has been assessed as temporary medium beneficial, which results in a medium-term temporary minor beneficial effect. This is not considered significant.

3.11.45. There is one PRoW within the Solar and Energy Storage Park, and six PRoW within the GCC. As stated in ES Volume 1, Chapter 2: The Proposed Development, in a worst-case scenario, the Grid Connection Infrastructure will require removal of cables from manholes and vehicles accessing the site to retrieve them. No open excavation or ground disturbance is likely. Due to the limited scale of impacts upon PRoW, these effects are assessed to be low adverse, which results in a minor adverse effect. This is not considered significant.

3.11.46. Prior to the commencement of decommissioning, the Applicant notes that it will make an assessment of the land and soil, and a programme of remedial action will be identified and agreed, which will then be undertaken during decommissioning to return the land to arable agricultural use. A programme may include subsoiling and installation of a field drainage scheme. An increase in soil organic matter content may occur during the lifetime of the Solar and Energy Storage Park. It is therefore expected that the land will be in the same or better condition than it is currently as a result of the expected natural enhancement through approximately 60 years of being set-aside, however this is likely to be temporary and subject to good agricultural land management practices being adopted after decommissioning.

3.11.47. The magnitude of change during the decommissioning phase is considered to be low and the significance of effect therefore not significant.

3.11.48. There are no noise, air quality, visual and transport receptors that would likely experience a significant effect on their amenity during decommissioning. Therefore, there are no effects arising from the Proposed Development on local amenities which results in no effect.

3.11.49. The Applicant proposes an Outline Skills, Supply Chain and Employment Plan ('OSSCEP') [APP-228] which is seen as an enhancement measure.

3.11.50. The Applicant also assesses the cumulative effects and concludes that in relation to employment it would result in a temporary minor beneficial effect which is not considered significant. The Appliant argues that 100% of the peak construction workers could be accommodated and there would still be no effect on the integrity of the hotel, bed and breakfast, and inns accommodation sector arising from the Proposed Development. The overall cumulative effect from the generation of GVA from

construction is likely to remain temporary low beneficial on the economy of the Study Area. The overall cumulative effect on PRoW during construction and decommissioning has the potential to have a greater effect due to the cumulative scheme of West Burton Solar Project adjacent to the Proposed Development. The Applicant considers that the cumulative effect on agricultural land associated with the Proposed Development remains minor adverse, which is not considered significant. In terms of operational affects the Applicant concludes no significant effects.

3.11.51. The Applicant identifies that the GCC has the potential to be shared with Cottam and West Burton solar projects. The Applicant considers combined (with a construction programme of 24-36 months) or sequential (a maximum construction period of 5 years) scenarios for works in the GCC. A minor beneficial effect is identified if the combination scenario is followed as the Applicant expects that employment and GVA generation assessed in Section 12.8 of Chapter 12 could increase due to the cumulative effect. Whereas a minor adverse effect would result if the sequential approach were adopted due to the longer timescales affecting PRoW and a lower magnitude of employment effect arising as this would remain the same over a longer period.

Views of IPs

Host Authorities

3.11.52. LCC in its LIR [REP-043] in terms of socio and economics and land use focuses its comments on BMV agricultural land. It notes policy S67 requires criteria to be met if the proposal is to be in accordance with policy. The Council commissioned Landscope to produce a report 'Review of Soils and Agricultural Land Classification for Gate Burton' (this is attached as Appendix 1 to the LIR) which provides a detailed review of the impact of the proposal on the agricultural land affected by the proposal.

3.11.53. LCC notes that the vast majority of the land proposed for the Solar PV site comprises grade 3b. However, at least 20% of the principal site and 50% of the corridor site is Grade 3a land which is classed as BMV. LCC considers that the Proposed Development is likely to have a cumulative or defined negative impact that will result in the loss of agricultural production in the development area generally and/or the permanent loss of production from mostly medium quality agricultural land.

3.11.54. During the construction phase there will be significant damage to soil structure particularly on heavy clay soils associated with traffic. Soil and water issues will arise during construction and LCC recommend that a requirement is imposed on any DCO granted to ensure a Soil Management Plan, both for the site and the cable route is submitted and approved.

3.11.55. In summary, LCC states given the overall scale of the project and the loss of agricultural land, a significant proportion of which is classed as BMV, the Council considers this loss to represent a significant negative

impact not only within the local area but also when considered in-combination with the loss of land from other potential NSIP scale solar developments that are also being promoted and considered across the County. A county-level alternative assessment area should be applied which as a minimum should consider scope for connection into the National Grid at the locations proposed by the registered NSIP solar projects locally, and with specific consideration of agricultural land impacts. It considers the Proposed Development is contrary to Policy S16.

3.11.56. LCC noted that that the vast majority of the Order limits are outside of the Mineral Safeguarding Areas (MSA), designated in the Minerals and Waste Local Plan. LCC goes on to comment that when considering the nature and characteristics of the proposals, the Council is satisfied that there would be negligible impact in terms of any sterilisation of mineral resources.

3.11.57. In relation to PRoW LCC comment there are a number of Public Rights of Way in and around the Order limits. They comment that whilst these are to be retained and ongoing access maintained, albeit with some temporary diversions, there would nonetheless be a negative impact to the users of the recreational value of various public rights of way as a result of the development. The negative impact would result from a change of experience from that of woodland and open fields to a more industrial landscape when travelling through the solar park with its associated infrastructure creating a feeling of enclosure rather than the current open landscape views.

3.11.58. WLDC in its LIR [REP-053] identifies the adverse effects of the Proposed Development during its construction, operation and decommissioning. During construction it is noted the Proposed Development will impact 155.2 ha of BMV land when grouping the solar arrays and cable routes. Attention should also be given to the loss of poorer quality land that contributes to the quality and character of the environment or the local economy. WLDC points out the ES states that the area of land within the Order limits which would be required on a temporary basis comprises approximately 147ha (excluding the 2ha area for the substation/permanent planting, and 6.2 ha which is within a solar exclusion zone and therefore unaffected) of grade 3a BMV or estimated BMV land. When defining land which would be taken on a temporary basis, this means that it would be used during construction only and can be returned to farming use during operation (e.g., sheep farming or mowing, but not arable farming) after the construction period. The figures above include the area underneath the panels where grazing or mowing could be undertaken (78.4ha grade 3a and estimated BMV) in accordance with the Outline Landscape and Ecology Management Plan (oLEMP), as well as the GCC (74.8 ha of estimated BMV) which can be returned to agricultural use after construction.

3.11.59. In terms of operation WLDC comments that of the 80.4 ha BMV required during operation, up to an assumed maximum of 2ha is lost permanently due to not being returned to farm use following decommissioning, and

6.2 ha is within a solar exclusion zone and therefore could remain in agricultural use throughout operation. The remaining 73 ha would be used for ecological mitigation (species rich grassland) or under solar panels, and therefore, could remain in agricultural use throughout operation. Whilst it is claimed that there will be areas underneath the solar arrays where sheep farming could be undertaken, it must be noted that this will impact the versatility of the BMV land. Versatility is a key element of BMV and therefore if the versatility of the land is lost, it is questioned whether the land can be considered BMV.

3.11.60. At decommissioning WLDC notes there are doubts whether the land will ever be able to be returned to agricultural use, particularly if current tenant farmers lose their livelihoods. The ExA is reminded that the 60-year lifetime of the project will likely result in a loss of agricultural knowledge in the area and therefore WLDC would question the likelihood of whether the land will ever be returned.

3.11.61. In terms of socio-economic impacts WLDC raises a number of issues including that the ES should consider the socio-economic impacts of displacement of tenant farmers and agricultural workers, and the impact on land-take on the viability of affected farms. WLDC is of the view that lost food production during the lifetime of a solar farm is not a planning issue as farmers cannot be compelled to produce certain types of crops (except during national emergencies). Employment figures for the Proposed Development result in the creation of 14 full-time equivalent (FTE) positions. It is assessed one job will be lost so the net gain would be 13. WLDC queries whether these figures taken into account the loss of tenant farmers.

3.11.62. In terms of accommodation WLDC comments that it has been assessed that the accommodation within a 30-minute drive time will result in 14% of accommodation being left available. When considering Cottam, Gate Burton and West Burton all being in construction at the same time, this could result in a peak workforce of 1,886 workers across the three developments. The Applicant suggests that there is sufficient accommodation capacity within a 60-minute drive; however, this could include Nottingham, Doncaster and Grimsby as areas within the 60-minute drive time. This would therefore mean that all accommodation within WLDC would be occupied. Moreover, the figure above does not include the potential construction workers that would be required for the construction of Tillbridge. This would likely result in the need for accommodation to be found further afield.

3.11.63. In its conclusions WLDC comments that the Proposed Development will impact 147 hectares of BMV during construction. Moreover, it is concerned the ES has not used an established methodology for either ALC assessment or assessed the socio-economic impacts on the affected farms (displaced tenants and workers, agricultural supply chain), and this favours the Applicant's assessment of effects. During construction, the Gate Burton scheme will mean more than 86% of the accommodation will be occupied during the peak construction period within a 30-minute drive time. Whilst this suggests that the accommodation can cater for the Gate

Burton scheme if the Cottam and West Burton schemes are in construction at the same time 100% of temporary accommodation will be occupied. It must be taken into account that the impact of Tillbridge which has not been considered in the ES and therefore it is likely that would result in further pressure on accommodation within West Lindsey and the surrounding area.

3.11.64. NCC in its LIR [REP-045] states in terms of agricultural land it is understood that soil sampling has not been undertaken due to the fact that the land will be restored to agricultural use following construction of the scheme; however, it is not yet known if there will be any restrictions on continued agricultural use associated with the cable route. The cable route contains 74.8 ha of BMV agricultural land. It is considered by NCC that providing the majority of the cable route can be restored to agriculture use then this is acceptable in policy terms. In relation to Public Rights of Way NCC notes it is anticipated that as the cabling is underground that the main disruption to PRoW would be during the construction phase.

3.11.65. NCC also confirm that there was no issue in respect of mineral sterilisation. It stated that the entire western side of River Trent lies within a Sand and Gravel Mineral Safeguarding Area, but that given the relatively small land take it did not foresee any problems.

3.11.66. BDC in its LIR [REP-038] comments that in terms of agricultural land it is understood that soil sampling has not been undertaken due to the fact that the land will be restored to agricultural use following construction of the scheme; however it is not yet known if there will be any restrictions on continued agricultural use associated with the cable route. The cable route contains 74.8 ha of best and most versatile agricultural land. It is considered that providing the majority of the cabling route land can be restored for agriculture then this is acceptable in policy terms.

3.11.67. Public Rights of Way are another important consideration for BDC and advice should be obtained from NCC's Public Rights of Way officer. It is anticipated that as the cabling is underground that the main disruption to public rights of way would be during the construction phase.

3.11.68. NCC welcomes the enhancement measures proposed in the form of the OSSCEP.

Natural England (NE)

3.11.69. NE submitted a Relevant Representation [RR-193] in which it stated overall, it is satisfied that the proposals address the majority of potential impacts to the natural environment. BMV is the only area of concern it considers requires further assessment and/ or information to enable the ExA to make an informed decision.

3.11.70. To properly inform an assessment of potential impacts NE requested that the Applicant provide a table providing the proportion of the Proposed Development infrastructure against the ALC grades of the site including areas of permanent and non-permanent loss.

3.11.71. NE advises soil surveys will be necessary post-consent to inform the construction and ensure that the cable route is restored to its current ALC grade. Natural England advises that this should be made a requirement of the DCO, along with restoration of the cable trenches to their ALC grade prior to operation of the Proposed Development, to ensure the impacts along the cable route are only temporary as described.

3.11.72. NE considers the Proposed Development has the potential to lead to the permanent reduction in agricultural production. It should be considered whether this is an effective use of land in line with the National Policy Statement for Energy (EN-1) and Renewable Energy Infrastructure (EN-3).

3.11.73. There could be a disbenefit to the soil resource due to unknowns as a result of the solar development infrastructure. It is currently unclear as to what impact the solar panels may have on the soil properties such as carbon storage, structure and biodiversity. For example, as a result of changes in shading; temperature changes; preferential flow pathways; micro-climate; and vegetation growth caused by the panels. Therefore, it is unknown what the overall impact of a temporary solar development will have on soil health.

3.11.74. It is considered that as the solar panels would be secured to the ground by steel piles with limited soil disturbance, they could be removed in the future with no permanent loss of agricultural land quality likely to occur, provided the appropriate soil management is employed and the development is undertaken to high standards. Consequently, NE advises that any granting of planning permission should be made subject to requirements to safeguard soil resources and agricultural land. The potential impact of loss of agricultural land and BMV land could be lessened if the Proposed Development was time limited.

3.11.75. NE welcomes the preparation of an outline Soil Management Plan (oSMP) which has been prepared and submitted with the application[APP-233].

3.11.76. NE also concluded a SoCG with the Applicant [REP6-016] that covered a number of matters including in relation to agricultural land in which all matters were agreed. It was agreed that the Applicant's ALC survey approach for the Solar and Energy Storage Park was acceptable and that a further ALC survey was required for the GCC prior to the commencement of construction.

Other IPs

3.11.77. Many of the RRs raised issues with regard to the amount of agricultural land that would be lost through the Proposed Development. Concern was expressed in terms of the loss of food production and the effect this may have on the UK's ability to be self-sufficient or less reliant on food importation, many referencing world events and instability pointing to justification for not degrading the country's ability to maximise food production. Many put food security above energy security recognising that there could be a conflict. The loss of BMV as well as agriculturally

productive land was of concern with many noting that Lincolnshire was the 'bread-basket' of England and an important food producing area. These and other related points were raised by many of the individual IPs as well as Parish Councils.

3.11.78. 7000 Acres submitted numerous submissions during the Examination including responding to Written Questions, attendance at hearings and other submissions where these issues were touched on. In particular at Deadline 2, 7000 Acres submitted a series of Written Representations which outline their views on a number of matters. Of particular relevance to this section are [REP2-070, REP2-071, REP2-074 and REP2-077] which relate to Agricultural land, Socio-economics and land use, land productivity and food security and their final submissions [REP7-008].

Examination

3.11.79. In ExQ1 [PD-006] I asked a series of questions related to socio-economics and which covered a number of matters. In relation to BMV and agricultural land Q1.12.1 through to Q1.12.6 addressed various points including seeking information on soil sampling and restoration of soils, responses from the Applicant to issues raised by NE, matters related to compliance with national policy, on soil health and in relation to the Soil Management Plan.

3.11.80. In response the Applicant confirmed that surveys for the GCC had been programmed for autumn, that a pre-construction survey was identified in the oSMP and that the oSMP had been updated to address NE's comments. Subsequently in the Examination an ALC survey of the GCC was undertaken and submitted under Appendix B to [REP5-047]. Furthermore, the Applicant confirmed they had reached agreement with NE that the soil sampling undertaken for the Solar and Energy Storage Park was appropriate and acceptable. This is agreed in the SoCG with NE [REP6-016].

3.11.81. In relation to a request from NE regarding the breakdown of areas of use within the Solar and Energy Storage Park by land classification as well as to address the issues raised by the Host Authorities and the many RRs the Applicant produced an Agricultural Land Technical Note [REP2-046] which it submitted at Deadline 2.

3.11.82. In relation to concerns expressed by NE and in response to questions as to mitigation the Applicant further confirmed that it had amended Requirement 19 of the dDCO such that there was now a decommissioning period after 60 years and therefore any loss of BMV could be confirmed to be temporary in that context.

3.11.83. In terms of responding to policy and explaining how the Applicant had sought to minimise the impacts on BMV the Applicant explained that section 7.13 of the Planning Design and Access Statement [REP6-004, REP6-006] sets this out and identifies the actions taken as:

- selection of a site that was mapped as Grade 3 land, noting the lack of availability of lower grade land in the area (see Figure 7-2 in the PDAS);
- retaining agricultural use in an area of the Proposed Development estimated to be grade 3a near Knaith (see Figure 7-1 in the PDAS);
- micro-siting the development that could be permanent (ie BESS and substation) so that the component of the development on BMV land is reduced. See section 4.6 of the PDAS for further environmental considerations on this element of development;
- protection of soil resources during construction, operation and decommissioning in order to fully restart agricultural use on the Grid Connection Corridor after construction and the Solar and Energy Storage Park after decommissioning;
- retaining the ability to retain agricultural use during the operational phase of the Proposed Development (Planning Statement, paragraph 6.7.26).
- the Applicant has committed to a 60 year time limit on the consent to provide more confidence that the impact on BMV land is temporary.

3.11.84. It was further advised that remaining areas of Grade 3a land within the Solar and Energy Storage Park would not likely be economically viable to farm should they be removed from the Proposed Development but would reduce the benefits in terms of electricity generation. Their removal would introduce gaps into the solar scheme that would also make it less efficient to manage than a single contiguous site, whilst creating small, oddly shaped land parcels that would be unlikely to be used for agriculture. Therefore, the decision was made to retain these areas within the Proposed Development.

3.11.85. In terms of efficiency the Applicant noted that the construction of a scheme with an estimated capacity of 531 MW of solar and associated battery storage on a site of 652 hectares is an efficient and effective use of land.

3.11.86. 2024 NPS EN-3 paragraph 3.10.8 states that: "*Along with associated infrastructure, generally a solar farm requires between 2 and 4 acres for each MW of output*." The area covered by Work Number 1 (the solar panels and balance of solar system plant) is approximately 476 hectares or 1,176 acres. This would indicate approximately 2.2 acres of land for each MW of capacity. The less land used for the same output, the more efficient the use of land, so the Proposed Development presents a use of land within the range expected in 2024 NPS EN-3 and would be at the more efficient end of the spectrum.

3.11.87. The Applicant also points to the Statement of Need Section 7.6 [APP-004] which explains that large scale solar is one of the most efficient uses of land for energy generation purposes. The analysis shows that if you use the land to grow crops for a biogas plant you would need 30-60 times as much land to generate the same amount of electricity.

3.11.88. The Applicant further noted that as discussed in section 7.13 of the PDAS and summarised above, the development is in accordance with 2011 NPS EN-1 because the impacts on BMV land have been minimised and areas

of poorer quality have been used in preference where possible, this similarly is in accordance with 2024 NPS EN-1. Effects on soil quality are also being minimised through measures set out in the OSMP [CR1-040], with a final Soil Management Plan secured by requirement 17 in the rDCO, to be substantially in accordance with the OSMP.

3.11.89. The Applicant's view, which is included in its response to my first written question Q1.12.14 [REP2-041], is that the temporary loss of 80.4 hectares of BMV land would be an effective use of land because:

- it enables the generation of a large amount of urgently needed renewable electricity and battery storage;
- the area of BMV land in the scheme is 11% of the area in the Solar and Energy Storage Park; a small proportion;
- removing areas of BMV land from the Scheme would reduce the benefits of the scheme and potentially not leave areas that would be practical to farm;
- there is a lack of identifiable alternative sites of a lower grade in the vicinity of Cottam Substation;
- the non-permanent, reversible impact of the Scheme on agricultural land;
- the ability for agricultural use to continue throughout the life of the Scheme and the potential for the soils to recover due to being taken out of intensive farming; and
- it enables the creation of a single, contiguous site to deliver an efficient and effective solar farm development.

3.11.90. The Applicant also points to other solar decisions including that in respect of Longfield Solar Farm in regard to the conclusions reached on BMV.

3.11.91. The Applicant in terms of soil health identifies various statements in policy documents and research papers and concludes that there are identifiable benefits with reversion to grassland. The Applicant further states that there is no evidence to show that shading or temperature changes create any adverse effects on soil and provide photographs of panels *in situ* with healthy grass growth below.

3.11.92. In terms of the other issues raised in ExQ1 on socio-economic matters these are at Q1.12.7 to Q1.12.14 and address issues related to PRoW, construction employment, sheep grazing, return of land to arable use and land use, food production, decommissioning, tourism and an individual business operator.

3.11.93. The Applicant provided detail on factors that affected professional judgement on magnitude of impact on PRoW including distance of diversions. In terms of construction employment, clarification was provided on the basis of the leakage percentage.

3.11.94. In terms of sheep grazing, it was clarified this was not a commitment but an option and further explanation was provided as to how it could be managed. Subsequently, at ISH 3 it was subsequently confirmed there would be no commitment secured for sheep farming and so it was right not to identify it as a future agricultural use of land. In terms of future

agricultural use, the Applicant in response to other questions confirmed that option agreements had been concluded with the majority of land owners in the Solar and Energy Storage Park and the land would be returned to them at the end of the period in a decommissioned, as is presently, state.

3.11.95. The Applicant sought to quantify the loss in agricultural production across the site from productivity of BMV land by comparison with non-BMV land. It suggested that as a worst-case scenario there would be a reduction in wheat production of 103 tonnes if other land was used than BMV land within the Solar and Energy Storage Park for such production. It compared that with the fact the UK produces 15.5 million tonnes of wheat.

3.11.96. In response to tourism matters, the Applicant suggested that in consideration of the effects on views, PRoW and accommodation along with the limited number of destinations that it had considered there was no significant effect on tourism.

3.11.97. In terms of potential effects on a local business, Woodside Pet Care, the Applicant confirmed it had regard to this as a receptor. The embedded mitigation includes off sets to reduce visual effects and planting would be established along the boundary. Construction traffic would be managed along Kexby Lane and the construction compound has been sited away from properties. Flood risk would not be increased in the area and a fCEMP is to be secured through the DCO.

3.11.98. At ExQ2 [PD-009] I sought further clarification in respect of Chapter 12 referencing sheep grazing as continued agricultural use of land as a mitigating factor given that at recent ISH 3 it was confirmed this was not formally secured. The Applicant confirmed in its response [REP4-046] it had amended Chapter 12 and provided an updated version [REP4-010].

3.11.99. The Applicant also expressed its view that the WMS of 25 March 2015 on BMV should be given limited weight following a question I raised in ExQ2.

3.11.100. At ExQ3 [PD-013] I noted the Applicant had confirmed that it had carried out a further ALC survey but that I had not received this submitted into the Examination. The Applicant attached as Appendix B to its responses to ExQ3 [REP5-047] a copy of the land classification report for the GCC. It noted that the surveys showed that 61.6 ha (34%) of the land was BMV land and 6.8 ha (4%) was estimated BMV land, making a total of 38% BMV land within the cable corridor (including the additional area south of Torksey Ferry Road). This compared to 74.8 ha (43%) of the land within the cable corridor that was estimated to be BMV land in the desk study. Therefore, the amount of BMV land within the Order limits was slightly less than previously assumed. The survey results and associated report do not change the assumptions and conclusions of the Environmental Statement as regards effects on agricultural land classification. The Applicant further confirmed the survey results will be used to inform the detailed Soil Management Plan by including measures to ensure the soil is returned to the landowner in like for like condition.

The Applicant noted the soil survey was completed by Land Research Associates (LRA) who have over 29 years' experience in conducting ALC surveys. The ALC Report is an objective assessment by an experienced soil scientist who is a member of the British Society of Soil Science (BSSS). The Applicant notes that BSSS Code of Conduct requires that all members discharge their professional responsibilities with integrity and due scientific and technical competence.

3.11.101. During the Examination I also included at ISH3 a session on landscape and land use at which I examined the issues of surveying and identification of BMV and sheep grazing. The Applicant's responses to these were referenced in response to written questions above.

3.11.102. In its Responses to submissions made at Deadline 4 [REP5-046] the Applicant also produced a technical paper to address the effects of the Proposed Development on tourism. In summary, this concluded that the impact of the Proposed Development has been assessed on visitor attractions, recreation facilities and attractions and other tourism recreation receptors during the construction and operation of the Proposed Development. The assessment concludes that the effect is not significant.

3.11.103. In its summary of Oral Submissions following ISH3 7000 Acres noted [REP3-048] that "*there should be no weight given to any form of continued agriculture on the Gate Burton Energy Park. The token gesture of any sheep grazing, as seen at many other solar farm applications is just planning propaganda and a photo opportunity. The heavy and wet land in this area is not conducive to sheep welfare. Hence this being an arable landscape, famed for growing cereals. Lincolnshire is after all 'the bread-basket of the UK'*."

3.11.104. In respect of BMV 7000 Acres' post hearing submission [REP3-050] states Land Research Associates (LRA) has undertaken an ALC for the proposed solar panel site. The survey was at a reduced scale of approximately 1 borehole per 2 hectares from the 1 borehole per hectare recommended in TIN049 (Natural England Technical Information Note TIN049 - Agricultural Land Classification: protecting the best and most versatile agricultural land). It is normally expected that the ALC survey be undertaken in line with the MAFF 1988 guidelines and TIN049. These documents set out the precise methodology by which the ALC survey should be undertaken, with auger bore sampling at 1 hectare intervals and a suitable number of soil pits dug to determine the precise nature of the soil(s). The findings of the ALC report essentially identify over 80% of the site as Grade 3b. The majority of any BMV land is shown to be Grade 3a. As set out above the ALC report is not fully in line with the MAFF 1988 guidance, which recommends auger borings at 1-hectare intervals, and soil pits dug in representative soils types. The report is more in line with a reconnaissance survey. 7000 Acres recommend that a full and complete independent survey is carried out in accordance with MAFF 1988 and TIN049 guidance.

3.11.105. LCC's summary of oral submissions [REP3-037] confirms that LCC has no additional comments over and above the objections raised within its LIR which remain. In short, there is a loss of BMV which should weigh negatively in the balance. LCC considers that taking such land out of arable production for 60 years is a meaningful 'loss' or negative effect which needs to be afforded proper weight. The Applicant's attempt to reduce this to a 2ha loss based upon permanent effects should be rejected (see REP2-044 at p.16), a loss for 60 years is a significant adverse effect which should be weighed into the balance.

3.11.106. WLDC's post-hearing submissions [REP3-044] confirm that it has no further comments to make beyond those already expressed in its Local Impact Report and Written Representation.

Conclusions on Socio-economics and land use (including Agricultural Land and Best and Most Versatile Land (BMV))

BMV

3.11.107. Taking account of the above, and in particular NE's comments and signed SoCG, I consider the Applicant's assessment of ALC land within the Solar and Energy Storage Park and its additional report on land within the GCC provide for a reasonable basis for the identification and assessment of BMV land. The report provides a robust assessment of the ALC classification of the land located within the Order limits. I note and acknowledge some of the shortcomings highlighted by the IPs and that the assessment and surveys may not be in strict accordance with the guidelines. However, NE is satisfied with the approach and application that the Applicant has adopted and the assessments are undertaken by professional and competent professionals exercising judgement and providing justification where appropriate. Overall, the IPs do not provide for an identification of a substantially greater area of BMV land than would be affected and the areas surveyed and assumed gave a reasonable indication of the scale and extent of BMV land that would be affected.

3.11.108. Overall, the Proposed Development would utilise approximately 155 ha of BMV (including estimated BMV and based on the original assumptions in the ES). This would comprise 80.4ha within the Solar and Energy Storage Park, and the remainder within the GCC would be restored following construction. Of this 80.4 ha it is suggested a maximum of 2 ha would be permanently lost as it would accommodate the substation and BESS etc. A further 6.2 ha of this land could be retained in agricultural use as it is in exclusion zones. The remaining c73 hectares would be used for ecological mitigation grassland. It has been confirmed that there is no commitment that this would be used for sheep grazing although it remains a possibility. Furthermore, the more recent survey results of the GCC do identify less BMV land than was originally assumed. But given that all of this is only temporarily lost and would be restored following construction the temporary loss is not significant at whatever level.

3.11.109. The Applicant has submitted an OSMP [CR1-040] which was updated following NE's comments and the later ALC survey. The survey results

will be taken into account in any full SMP produced. The SMP is secured through Requirement 17 of the rDCO. I am satisfied that mechanisms are in place to ensure that soil is managed and restored at appropriate times including any longer term monitoring and remedial measures should any restoration issues arise.

3.11.110. The loss of BMV needs to be justified and the Applicant has demonstrated that it has had regard in terms of scheme design, alternative selections and embedded mitigation that it has sought to avoid the most productive agricultural land as is required by policy. Where there is the use of BMV the Applicant has sought to minimise this and put in place mitigation to further reduce this where possible. The permanent loss of up to 2 ha of BMV and the loss of some 73 ha over such a significant period (60 years) during operation is a significant adverse effect of the Proposed Development. The fact that it is temporary and reversable for the majority of the affected land, however, does mitigate this to some extent. Furthermore, contextualising the loss based on the figures provided that there is approximately 1.2 million ha of farmland in the East Midlands, with approximately 106,474 ha in West Lindsey and that in terms of BMV there is some 618 789 ha of BMV in East Midlands the Proposed Development would affect a very small proportion of the overall land in these classifications.

3.11.111. As was noted in Longfield Solar Farm, the loss of any BMV agricultural land is to be discouraged, policy also requires justification. I am, satisfied that the effect has been justified, nevertheless the temporary loss of approximately 155ha overall over the construction period, 73 ha over the operational period (taking account of the 6.2ha for solar panel exclusion zones) and a maximum of 2 ha permanently is an adverse effect of the Proposed Development. I accept that the Applicant has sought to minimise the impacts on BMV agricultural land. Where BMV agricultural land is lost, the Applicant has demonstrated that it has sought to avoid and where it has been necessary to use it has provided sound and compelling justification for its use. As such, while it would result in harm, I consider it attracts only a moderate amount of negative weight in the overall planning balance. As the GCC is shared with other developments similar conclusions can be drawn and this land would be restored within a reasonable period. Given the figures related to the levels of BMV in West Lindsey, and in the East Midlands I am satisfied that a similar conclusion can be drawn in respect of the cumulative effect the Proposed Development would have in relation to the Solar and Energy Park with other schemes in the locality.

3.11.112. Overall, the Proposed Development meets the requirements of the 2011 NPS, the 2024 NPS, the WMS and would be in accordance with both national and local policy in this respect.

Agricultural land Productivity

3.11.113. Many of the IPs were concerned with the loss of productive agricultural land and were concerned with the focus on BMV. The use for food production should be recognised in decisions in the context of the NPPF. The Applicant has identified the nature and use of land in the area and

calculated the loss of productivity based on BMV as this is the focus and purpose of the identification of BMV. This demonstrated that there is a very minor effect that when taken in the context of regional or national figures would not undermine national food security in any meaningful way.

3.11.114. Whilst I appreciate the concerns of many IPs and the concerns expressed there is no meaningful assessment of the extent of lost production. Furthermore, given the national and regional figures identified by the Applicant in respect of cereal production even taking account of the whole site area there would be little discernible effect. This would be true even in a cumulative scenario on the basis of the figures produced by the Applicant.

Farm holdings

3.11.115. No significant assessment has been undertaken in respect of the loss of income or effect on farm holdings. However, the majority of the land that lies within the Solar and Energy Storage Park has been subject to purchase through options and agreement. Whilst Compulsory Acquisition is proposed this is a back stop measure and the Applicant has confirmed that the option agreements include reference to circumstances of Compulsory Acquisition and returning the land to the original owner upon decommissioning. On this basis this can be considered in the context of farm diversification as noted by WLDC. There are no significant land or farm interests in the Solar and Energy Storage Park objecting to the Proposed Development. There are limited jobs lost (I deal with this below) and therefore I am satisfied that there is no material harm arising in this regard.

PRoW

3.11.116. I recognise and accept that there would be some temporary effects on PRoW in the area of the Solar and Energy Storage Park and in the GCC. These can be mitigated through the Outline PRoW Management Plan [CR1-034] secured through requirement 16 of the rDCO and the fCEMP [REP6-011, REP6-011a] secured through Requirement 14 of the rDCO. This would maintain and allow continued use. Some planting would restrict views on some of these PRoW around the Solar and Energy Storage Park during the operational phase but this would not significantly affect their useability and the public enjoyment to any significant degree, as is assessed in more detail in the landscape section of this Report.

Tourism

3.11.117. In terms of the impact on accommodation in the locality and in respect of tourism. I note the capacity identified within the 30 min and 60 min drive times. The Applicant's assessment demonstrates that there is sufficient capacity to accommodate the increase in uptake if it arises, even in the context of the cumulative assessment. Whilst it is noted that concerns have been raised that this does not include Tillbridge, which may use up any spare capacity within the 30 min drive time, there are other factors

to consider, including that there is still sufficient capacity within the wider drive time area.

3.11.118. In terms of the wider effect on the tourist economy the Applicant notes there are only a limited number of attractions in the immediate locality that with the proposed mitigation and conclusions on effects they conclude there would be no significant effect on tourism. The Applicant argues that in other locations there is no direct correlation between Solar farms and a drop off in tourism. The location is not a nationally designated landscape or contains significant views albeit there is an AGLV which I have considered above. I am satisfied that there is no evidence before the Examination that would lead to a conclusion that there would be harm to the tourist economy or accommodation occupancy levels would be put under undue significant stress.

Employment

3.11.119. In terms of employment the Applicant concludes that there would be a limited beneficial effect. This would mostly arise during the construction and decommissioning phases as there is more limited opportunities or jobs during the operational phase. The Applicant has provided an Outline Skills, Supply Chain and Employment Plan [APP-228] and a full plan substantially in accordance with which must be submitted and approved prior to the commencement of the authorised development secured through Requirement 18 of the rDCO. No IPs provided substantial challenge to this position and the host authorities welcomed the Applicant's OSSCEP. I am satisfied that there would therefore be a resultant limited beneficial effect.

Mineral sterilisation

3.11.120. The Applicant notes in ES Chapter 12 that discussion on the need for a Mineral Safeguarding Assessment (MSA) was held between the Applicant and LCC and NCC Council in May 2022. It was agreed that an MSA was not necessary as a standalone DCO application document due to information provided on the reduced and narrowed routing of the GCC which passes through an MSA for sand and gravel.

3.11.121. NCC noted in its LIR given the specifics relating to 'Gate Burton' and the cabling options for connection to the national grid there was no issue in respect of mineral sterilisation. It stated that the entire western side of River Trent lies within a Sand and Gravel Mineral Safeguarding Area, but that given the relatively small land take it did not foresee any problems.

3.11.122. LCC noted that that the vast majority of the Order limits are outside of the Mineral Safeguarding Areas (MSA), designated in the Minerals and Waste Local Plan. A small section of the chosen GCC is within the sand and gravel MSA, but the relevant section of the application document confirms that "*It was also agreed that wherever possible, the route of the GCC follow existing corridors/linear features (field boundaries), to minimise sterilisation of the MSA for sand and gravel. This has been considered in the final design of the Scheme*". This approach aligns with discussions with the Applicant. LCC goes on to comment that when

considering the nature and characteristics of the proposals, the Council is satisfied that there would be negligible impact in terms of any sterilisation of mineral resources.

3.11.123. I have had no substantive evidence put before me that would lead to a different conclusion and therefore I am satisfied that there are no material impacts from the Proposed Development in this regard and therefore this does not affect the final planning balance.

Overall

3.11.124. Taking all of the above matters into account, I find that the Applicant has had adequate regard to the socio-economic, and other land use impacts of the Proposed Development, including on BMV. I have concluded the evidence indicates a moderate adverse effect in relation to BMV, which is justified, but no significant adverse impacts on PRoW or mineral resources are likely to arise from the Proposed Development and there would be a small positive benefit from employment and therefore on the local economy.

3.11.125. Accordingly, I am satisfied that the application accords with the guidance set out in 2011 NPS EN-1, 2011 NPS EN-5, 2024 NPS EN-1, 2024 NPS EN-3 and 2024 NPS EN-5 in this respect. Likewise, I find no significant conflict with the policies set out in the NPPF or local development plans.

3.11.126. I give a moderate negative amount of weight to the adverse impact resultant from the effect on BMV and a little positive weight to the employment benefits but the other effects in terms of socio-economic and land use matters do not affect the final planning balance.

3.12. TRAFFIC AND TRANSPORT

Introduction

3.12.1. This Section addresses the access, transport and traffic effects of the Proposed Development, including the cumulative effects associated with other NSIP solar schemes in the area.

Policy Considerations

National Policy Statements

3.12.2. 2011 NPS EN-1 recognises that new energy NSIPs can result in substantial impacts on the surrounding transport infrastructure. It identifies the traffic and transport effects that can arise from energy infrastructure developments and advises applicants to include a transport assessment using methodologies agreed with the relevant national and local highways and transportation authorities. It also indicates that the SoS should seek to ensure that the application has sought to mitigate impacts, including during the construction phase of the development.

3.12.3. Similar advice is found in the 2024 NPS EN-1 including that the Secretary of State may attach requirements to a consent where there is likely to be substantial HGV traffic that:

- control numbers of HGV movements to and from the site in a specified period during its construction and possibly on the routing of such movements;
- make sufficient provision for HGV parking, and associated high quality driver facilities either on the site or at dedicated facilities elsewhere, to support driver welfare, avoid 'overspill' parking on public roads, prolonged queuing on approach roads and uncontrolled on-street HGV parking in normal operating conditions; and
- ensure satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with network providers and the responsible police force.

3.12.4. 2024 NPS EN-3 notes the importance of assessing various potential routes to the Order limits for the delivery of materials and components during the construction period and the suitability of access roads for vehicles transporting components and the need to identify potential modifications where necessary.

3.12.5. It notes at Paragraphs 2.10.141 that where cumulative effects on the local road network or residential amenity are predicted from multiple solar farm developments, it may be appropriate for applicants for various projects to work together to ensure that the number of abnormal loads and deliveries are minimised, and the timings of deliveries are managed and coordinated to ensure that disruption to residents and other highway users is reasonably minimised. And at Paragraph 2.10.142 it advises that it may also be appropriate for the highway authority to set limits for, and coordinate these deliveries through, active management of the delivery schedules through the abnormal load approval process.

3.12.6. Once solar farms are in operation, the 2024 NPS EN-3 advises that traffic movements to and from the site are generally very light, in some instances as little as a few visits each month by a light commercial vehicle or car. Should there be a need to replace machine components, this may generate heavier commercial vehicle movements, but these are likely to be infrequent.

National Planning Policy Framework

3.12.7. Section 9 of the NPPF indicates that transport issues should be considered from the earliest stages of development proposals so that the potential impacts of proposed development on transport networks can be addressed and opportunities to promote walking, cycling and public transport are identified and pursued.

3.12.8. In terms of decision making, paragraph 114 advises that in assessing specific applications for development, it should be ensured that, amongst other things, safe and suitable access to the site can be achieved for all users and any significant impacts on the transport network, or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 115 makes clear that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Development Plan Policies

3.12.9. Local policies seek to ensure that development proposals ensure a safe and convenient operation of the transport network and that there is, or will be, sufficient infrastructure capacity to support and meet all the necessary requirements arising from the proposed development.

The Applicant's Case

3.12.10. The Applicant's case is set out in Chapter 13 of the Environmental Statement, this was updated at Deadline 4 during the Examination to provide some minor revisions [REP4-012]. The Framework Construction Management Plan was also amended on a number of occasions during the Examination and the latest version is provided in the list below. Chapter 13 is supported by figures and Appendices as follows:

- Figure 2-2: Existing Public Rights of Way (PRoW) [APP-031];
- Figure 2-4: Indicative Site Layout Plan [APP-033];
- Figure 2-5: Grid Connection Corridor Access Locations [REP2-012];
- Figure 5-1: Shared Grid Connection Corridor [APP-043];
- Figure 13-1: Transport Study Area [APP-100];
- Figure 13-2: Traffic Survey Locations [APP-101];
- Figure 13-3: Heavy Goods Vehicle (HGV) Routing [APP-102];
- Figure 13-4: Surrounding Highway Network [APP-103];
- Figure 13-5: Walking and Cycling Network [CR1-004];
- Figure 13-6: Abnormal Load Routing [APP-105];
- Figure 13-7: PRoW Management (Construction Phase) [CR1-005]; and
- Figure 16-1: Cumulative Schemes [APP-108];
- Appendix 1-C: Consultation Responses [APP-111];
- Appendix 13-A: Transport Assessment Scoping Note [APP-163];
- Appendix 13-B: Key Policies and Guidance [APP-164];
- Appendix 13-C: Summary of Non-Significant Effects [APP-165];
- Appendix 13-D: Transport Assessment [APP-166]; and
- Appendix 13-E: Framework Construction Traffic Management Plan (fCTMP) [REP6-011, REP6-011a and APP-168]; and.
- Appendix 16-A: Short List of Cumulative Schemes [APP-181].

3.12.11. The Applicant also submitted an Outline PRoW Management Plan [CR1-034]. During the Examination the Applicant updated its Joint Report on the Interrelationships between Nationally Significant Infrastructure Projects, the final version submitted being [REP6-041] (hereafter referred to as the Interrelationships report) and which had included a Technical Note on cumulative impacts on traffic, and appendix B showing access locations published separately at [REP6-043].

3.12.12. The ES Chapter 13 sets out an assessment methodology, study area and significance criteria. It confirms that the assessment is based on peak daily movements of 60 HGV, 30 LGV and 138 staff vehicles. The staff vehicles would be a proportion of the total staff as it is proposed to run shuttle bus services between the Solar and Energy Storage Park and four centres where construction staff would be collected. The assessment ascribes trips to the highway network and access points to the various accesses and compounds. Given the low level of staffing during operation

(in the region of 14) this has been scoped out of the assessment. In terms of decommissioning, assumed in 60 years, this is equated to construction traffic, although this is considered to be an overestimate.

3.12.13. ES Chapter 13 sets out embedded mitigation measures which during construction and decommissioning include the implementation of a fCTMP, and fDEMP, providing suitable accesses, internal construction routes and haul roads, prohibiting construction vehicles at sensitive locations, maintaining and protecting PRoW, operating HGV and abnormal load routing, reducing HGV movements during peak hours, implementing appropriate delivery management and monitoring. The Applicant also proposes the implementation of a shuttle bus and minibus transfer internally and providing appropriate and sufficient car parking on site. The Applicant also notes it will engage specialist haulage services to transfer abnormal loads obtaining necessary escort, permits and traffic management. The Applicant further confirms it will seek opportunities to combine mitigation (including some of the above measures) for the West Burton Solar Project and Cottam Solar Project schemes in order to reduce cumulative impacts during the construction phase. This could include sharing the shuttle service to transport construction workers to/ from multiple sites or sharing construction compounds to consolidate trips. Further details will be set out within the Detailed CTMP(s) once further details in relation to the Cottam and West Burton solar projects are known.

3.12.14. The assessment of likely impacts and effects is set out at section 13.10 of Chapter 13 of the ES.

3.12.15. In terms of the impact on the highway overall it notes that for the A156 High Street/ A1500 Stow Park Road and A156 Gainsborough Road/ Willingham Road junctions, and given the temporary nature of construction trips and the minimal anticipated levels of additional traffic movements for the remaining junctions during the development peak hours (less than 10% increase), no junction modelling has been carried out in support of the TA and ES. This follows the approach set out within the Transport Scoping Note (ES Volume 3: Appendix 13-A) which has been reviewed and agreed by the local highway authorities (LCC and NCC).

3.12.16. The assessment then considers the impacts for various receptors and reaches the following conclusions:

- The impact of severance on road link receptors has been assessed as minor adverse (Kexby Lane) or negligible (all other receptors) and is considered to be not significant.
- The impact of severance on PRoW receptors has been assessed as minor adverse (PRoW NT|SouthLeverton|BOAT16) or negligible (all other receptors) and is considered to be not significant.
- In terms of driver delay on road junction receptors has been assessed as negligible for all receptors and is considered to be not significant.

- The impact of pedestrian delay on road link receptors has been assessed as minor adverse (Kexby Lane) or negligible (all other receptors) and is considered to be not significant.
- The impact of pedestrian delay on PRoW receptors has been assessed as minor adverse (PRoW NT|SouthLeverton|BOAT16) or negligible (all other receptors) and is considered to be not significant.

3.12.17. The impact on pedestrian and cyclist amenity on road link receptors has been assessed as negligible and not significant. The impact on pedestrian and cyclist amenity on PRoW receptors has been assessed as minor adverse (PRoW NT|SouthLeverton|BOAT16) or negligible (all other receptors) and is considered to be not significant. The impact of fear and intimidation on road link receptors has been assessed as minor adverse (Kexby Lane) or negligible (all other receptors) and is considered to be not significant. The impact of fear and intimidation on PRoW has been assessed as minor adverse (PRoW NT|SouthLeverton|BOAT16) or negligible (all other receptors) and is not considered to be significant.

3.12.18. The impact of accidents and safety on road receptors has been assessed as negligible and is considered to be not significant. This includes Kexby Lane which has been assigned a very low level of sensitivity in terms of accidents and safety with just one collision recorded along this link between the junctions with Upton Road (west) and B1241 Willingham Road (east) within the five-year period, as well as Headstead Bank where no collisions were recorded.

3.12.19. Section 13.13 of ES Chapter 13 addresses the cumulative effects during the construction phase taking account of the other solar projects in the area. In summary it concludes that no projects identified in ES Volume 3: Appendix 16-A are considered (cumulatively) to impact any of the receptors identified in this assessment. Any overlaps between the construction vehicle trips associated with the Proposed Development and West Burton Solar Project, Cottam Solar Project and Tillbridge Solar are likely to be primarily confined to wider strategic routes. The potential sharing of the GCC between the Proposed Development and the Cottam and West Burton solar projects would be expected to reduce potential cumulative effects as this would consolidate and reduce trips across the network compared to a situation where separate GCC were taken forward. Alternatively, the sequential installation of ducts and cables would reduce any temporal overlap between the Proposed Development and the Cottam and West Burton projects. In terms of the other schemes which have been reviewed, these are also not likely to contribute to the effects on transport and access receptors identified in ES Chapter 13 and therefore the effects are not significant.

Views of IPs

Host Authorities

3.12.20. LCC in its LIR [REP-043] notes that as Local Highway Authority for Lincolnshire, it has been involved in a number of meetings with the Applicant's design team and consultants during the pre-application stage. The Transport Assessment element of the ES examines the conventional

road transportation impacts of the Proposed Development, both during the construction and the operational phases. Having reviewed the application, the primary impact of this development will be during the construction phase. It considers that the Transport and Access Chapter is appropriate and provides a reasonable estimate of HGV and car traffic associated with the development during construction and shows that the impact will be within acceptable levels on the highway network. There is also a cumulative assessment which includes the other solar farms proposed in the area. Due to their locations, different minor roads are used for access, so the cumulative impact is considered acceptable. The assessment is based on working hours (Winter 08:00-18:00 / Summer 07:00-19:00) which mean workers will travel to/from the site outside peak network hours, this will be covered by the proposed requirement in the Draft DCO. Therefore, the project meets the requirements of Policy S45 of LCCP 2023-2043.

3.12.21. In terms of PRoW LCC comment there are a number of Public Rights of Way in and around the Order limits. They note that whilst these are to be retained and ongoing access maintained, albeit with some temporary diversions, there would nonetheless be a negative impact to the users of the recreational value of various Public Rights of Way as a result of the development. They explain this would be due to a change of experience from that of woodland and open fields to a more industrial landscape when travelling through the solar park with its associated infrastructure creating a feeling of enclosure rather than the current open landscape views.

3.12.22. WLDC in its conclusions in its LIR [REP-053] notes that traffic during the construction of the Proposed Development is a key concern. Whilst this Proposed Development would likely be acceptable given the contained nature of the site, it is the cumulative effects that would impact West Lindsey if the Cottam, Tillbridge and West Burton schemes where all to be in their construction periods at the same time. It is predicted that there could be up to 160 HGVs using the local road network per day during the peak construction period of all four solar schemes. The cumulative construction traffic routes are shown clearly at Appendix C and demonstrate the impact on West Lindsey with the majority of the district affected.

3.12.23. In terms of the impacts WLDC identifies the effects as stated in the ES as all PRoW receptors within the Order limits will be physically separated from construction routes and works. The local road network is expected to experience increases of at least 30 additional vehicle trips during the development peak hours. It is anticipated that as a worst-case during the peak construction period, there would be up to 60 HGVs per day to/ from the Solar and Energy Storage Park representing 120 movements. Moreover, it is noted that if the proposed Cottam, Tillbridge and West Burton solar projects were to commence at similar times a worst-case scenario would result in approximately 160 HGV vehicles using the local road network per day. Any overlaps between the construction vehicle trips associated with the Proposed Development and other schemes are likely to be primarily confined to wider strategic routes. Other schemes

are not likely to contribute to the effects on transport and access receptors (including the A156, Kexby Lane, Willingham Road, Marton Road, and the A1500 in Lincolnshire and Cottam Road, Headstead Bank, Broad Lane, Cow Pasture Lane and Town Street in Nottinghamshire).

3.12.24. NCC in its LIR [REP-045] notes it is the Highway Authority for the area. This section of the LIR reviews the outstanding issues associated with highways and transport aspects of the proposals and in particular the matters which require careful consideration. NCC will be seeking conditions with respect to the size, location, and access arrangements for any temporary compounds required to facilitate the construction of the grid connection, the routeing of vehicles involved in the laying of the cable and the condition and suitability of those routes, or for all of this to be set out in an agreed CTMP. NCC assumes the grid connection cable would be abandoned or repurposed on decommissioning rather than being removed. Otherwise, it would be seeking similar conditions to the above.

3.12.25. NCC also note that Public Rights of Way are an important consideration for the County Council. It is anticipated that as the cabling is underground that the main disruption to Public Rights of Way would be during the construction phase.

3.12.26. BDC in its LIR [REP-038] requests the examiner considers the response from Nottinghamshire Council in respect of highway and traffic implications during the construction and operational periods and how this would impact on Bassetlaw residents.

3.12.27. It further notes that Nottinghamshire County Council as Highway Authority is the main advisor for the district and has been consulted on the proposals and comments as follows (this response may also be replicated in the NCC response):

- *"The solar project is entirely within Lincolnshire. It is only the grid connection corridor that involves works within Nottinghamshire. The traffic impact of the development on the Nottinghamshire highway network is otherwise unlikely to be significant, particularly as most of the traffic would be limited to the construction and decommissioning of the solar farm.*
- *It is understood that the main construction phase is predicted to last 24 to 36 months between 2025 and 2027. There is an expected daily peak of 25 construction workers for the grid connection corridor who will be transported to and from the solar farm site by minibus. There will also be a daily peak of 16 light goods vehicles and 12 heavy goods vehicles associated with the grid connection that will be split across multiple accesses in both Nottinghamshire and Lincolnshire. The HGV route in Nottinghamshire from the A57 would be via the C2 Laneham Road/Rampton Road onto Cottam Road, Outgang Lane, Town Street and Headstead Bank. A 24.6m long lorry (abnormal indivisible load) will be used to transport the cable drums. Accesses to the grid connection corridor would be located on Cottam Road and Headstead Bank. There would also be an HGV crossing on Cow*

Pasture Lane (South Leverton Byway 16) and access to the grid connection corridor via Cottam Road for LGVs. An emergency access is also proposed on the northern side of Torksey Ferry Road. The West Burton, Cottam, and Tillbridge solar projects are likely to require similar access arrangements. Access via the Cottam railway line and the River Trent should be considered.

- *It is suggested (CTMP para.6.1.2) that the accesses to the grid connection corridor will be retained to facilitate occasional maintenance and repairs. The need for access is likely to be very infrequent and unlikely to involve vehicles as large as the cable drum transporter. If there is a genuine need to retain these accesses, they should be reduced in size suitable for the largest vehicle likely to visit to reduce the possibility of them being used as unintended laybys or areas that would attract fly tipping as they are not likely to be well observed.*
- *A Delivery Management System (CTMP para.7.4.4) will be implemented to control bookings of HGV deliveries from the start of the construction period. How will that be coordinated with the West Burton, Cottam, and Tillbridge solar projects that potentially will require access to the grid connection corridor at the same time? The most practical solution is for the grid connections to each solar project to be carried out in a single operation where they share the same corridor (CTMP para 7.6.1). Volume 1, Chapter 16: Cumulative Effects and Interactions Document Reference: EN010131/APP/3.3 Table 16.4 states that the other schemes are not likely to contribute to the effects on transport and access receptors including on Cottam Road, Headstead Bank, Broad Lane, Cow Pasture Lane, and Town Street. If not properly coordinated, they all might as access is required from single track roads and a narrow byway where vehicles would have limited opportunities to pass.*
- *Is it likely that sufficient temporary accommodation (CTMP 7.5.9) exists in the suggested residential centres to make the use of a shuttle bus service viable, particularly as employees from the other solar projects may be competing for the same accommodation?"*

National Highways

3.12.28. National Highways is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). In relation to the Gate Burton Solar Project, its principal interest is in safeguarding the A1, A46 and M180 trunk roads. Although the SRN is outside the Order limits, it is understood that construction traffic will be routed via the SRN. As such, it reserves the right to make written representations if an impact of construction traffic on the SRN is identified, or if changes to the application are made which result in impacts to the SRN. [RR-192]

3.12.29. National Highways also confirmed [REP6-052] that the updated national policy statements do not alter its position in relation to this DCO application and it has no further comments to make in relation to these policy statements.

Other IPs

3.12.30. Many of the RRs and submissions from individual IPs, Parish Councils and local groups raised concerns about the significant increase in traffic. Of particular concern was large HGV vehicles using narrow unsuitable local roads. Concerns were expressed at increased traffic volumes leading to dangers to other road users and significant disruption and delays. The increased congestion, HGV routing and nature of narrow roads was highlighted as a recipe for problems.

Examination

3.12.31. At ExQ1 [PD-006] I asked a series of questions related to the traffic and transportation issues. I asked the Host Highway Authorities to confirm their position in respect of the methodology, conclusion, mitigations and outputs put forward in the ES and the fCTMP and fCEMP. I also asked if they were satisfied with the proposed arrangements regarding abnormal indivisible loads and that the Applicant had suggested that a travel plan was not required. I sought clarification from BDC in respect of comments in the SoCG around accesses in the GCC close to Cottam power station.

3.12.32. I asked the Applicant for clarifications around assumptions and data seeking justification around percentage splits for the shuttle bus usage, the use of collision data which covered a period that included covid-19 pandemic years, and the weight that could be given to a joint CTMP when no firm commitment was being made.

3.12.33. The Applicant confirmed the construction staff split was based on 55% staff coming from the four main centres and the remaining coming from within a 60-minute drive. The Applicant confirmed that normally collision data was assessed over a 3-year period however in acknowledgement of the potential effect of Covid 19 they increased the period to 5 years. LCC confirmed this was acceptable and NCC did not challenge the period.

3.12.34. In relation to a joint CTMP the Applicant stated it is committed to working with the developers of Cottam and West Burton on joint mitigation, including the production of a Joint CTMP for the purpose of the shared corridor area. This is secured through the dDCO, in accordance with the fCEMP [REP5-023], submitted at Deadline 5. The Applicant advised shared mitigation measures may include joint traffic management, joint consultation with Lincolnshire County Council traffic officers, combined vehicle access and routeing plans and shared use of construction compounds, taking a holistic approach to construction traffic planning and management. Whilst it is not intended that the dDCO controls the Cottam, West Burton (or Tillbridge) schemes, the commitment of the developers of those projects to work with the Applicant is clear. The interrelationships report [REP6-041] demonstrates the parties' cooperation, and the signed cooperation agreement at Appendix C to that report secures the parties working together reasonably and in good faith to mitigate adverse impacts (clause 4.1.2).

3.12.35. The Applicant also noted that an Access Updates and Cumulative Impact Assessment Technical Note (TN) has been submitted at Deadline 2

[REP2-045]. This TN sets out the revised access proposals which are to be incorporated into the Framework Construction Traffic Management Plan and the recent engagement with LCC and NCC. The TN also outlines the current status of discussions with West Burton, Cottam Solar Park and Tillbridge with regard to developing a strategy that minimises the overall cumulative impact from an access perspective.

3.12.36. Both LCC and NCC as host highway authorities confirmed that the methodology and conclusions of the Transport Assessment as reported in Chapter 13 were acceptable. LCC confirmed the mitigation was acceptable in principle, but NCC stated there was insufficient detail at this time to determine whether coordination proposals between solar projects would sufficiently mitigate the cumulative impacts of construction traffic in relation to the GCC and the requirement for access via minor roads. In terms of Abnormal Indivisible Loads, again LCC and NCC indicated the assessment was acceptable in principle but noting that advanced notification and detailed approvals would be required with both suggesting coordination between the solar projects would be appropriate as they could require abnormal load movement at similar times. In terms of a Travel Plan they recognised there would be limited opportunities for sustainable modes, that the fCTMP contained appropriate measures and that travel planning measures post construction were not necessary.

3.12.37. At ISH3 session 3 [EV-008f] I examined construction issues including matters related to cumulative impacts, coordination between the solar projects in the area, compound and general access arrangements and site accesses in the GCC. As a post hearing submission NCC provided draft wording for what they referred to as a suggested condition to facilitate a method of coordination between the projects [REP3-038].

3.12.38. The Applicant's post hearing submissions highlighted its comments in relation to the co-operation agreement signed between the developers of the schemes (which is included as an appendix to the Interrelationships report). It was also noted that a further appendix to that report sets out an assessment of cumulative impacts on traffic and transport. This highlights that the main areas of overlap between the projects are the A1500, A145, A15 and A631. However, in that the Applicant notes the cumulative increases are well below the 30% threshold per the IEMA guidance and accordingly, this supports the initial conclusion in the ES that there are no significant cumulative impacts for traffic and transport from all of these schemes. The Applicant also confirmed the fCTMP is the primary location for securing commitments in relation to delivery management and other issues and that this would include a commitment to consider coordination in the event that construction duration overlaps. The Applicant noted that it is not appropriate to impose a requirement on the promoter of one of the DCOs to a firm commitment for a joint management plan. As part of the updates being carried out to the Interrelationship Report, the Applicant would re-consider the wording around joint traffic mitigation.

3.12.39. The Applicant resisted a vehicle movement cap on the basis the Applicant considers this unnecessary. It noted that an assessment has been carried

out which has included the other projects and adopted the worst-case parameters (ie where the construction periods of the projects entirely overlap). The Applicant noted that the environmental impacts are substantially lower than the relevant established thresholds in the IEMA guidance and therefore a vehicle movement cap is not required. It was also pointed out that section 7.6 of the fCTMP already includes the requirement to explore combined mitigation. In respect of road condition and restoration it was also confirmed such matters were secured through the fCTMP.

3.12.40. In terms of GCC accesses it was confirmed by the Applicant these were secured through the fCTMP and fCEMP where the grid connection accesses' footprints would be reduced from construction widths to operational needs during operation.

3.12.41. At ExQ2 I queried matters related to the cumulative assessment specifically regarding the temporal periods and secondly with regard to consistency with figures from Cottam and West Burton assessments. The Applicant explained that if the duration was increased due to sequential implementation the traffic requirements for vehicle numbers, which would stay the same, would reduce in magnitude as the same number of vehicles would be required over a longer period. In traffic terms therefore the Applicant concluded that the level of traffic impact of construction activities would be lower in magnitude than that assessed in the ES, but of a more prolonged duration. The applicant further explained that the scale of environmental impact reported is sufficiently low that an extension to the duration of that impact would not result in a worsening of environmental impact, particularly because the extension of duration would be coupled by a proportionate reduction in magnitude of impact. Thus, a longer construction period would not represent the worst-case.

3.12.42. In terms of differing figures in the assessments the Applicant pointed to the timings of the preparation and submissions of the documents which reflect the information available at the time. The Applicant noted that further assessment of the cumulative effect had been undertaken and was attached as an appendix to the Interrelationships report and which demonstrated that there was no more impact than assessed in the ES which did not therefore need updated. In response to ExQ2.13.2 [REP4-046], specifically in relation to the accesses to the GCC, the Applicant pointed to the West Burton ES and Cottam ES which quote the following with respect to the cable route:

"As there will only be around 18 arrivals and departures per access per day over a short, 90-day period, a detailed assessment has not been undertaken. It is unlikely that the addition of these trips will trigger the need for further assessment in line with the IEMA guidelines (10% change in traffic flows on sensitive road or a 30% on non-sensitive road). If the thresholds are breached, it would mean that baseline traffic flows are very low. This, in itself, would mean that the effects of traffic flows in relation to the construction of the Grid Connection Route would not be significant".

3.12.43. The Applicant therefore concludes that neither the West Burton or Cottam ES included a quantitative assessment of construction vehicle trips associated with the cable route corridors which could otherwise be incorporated as part of the above cumulative assessment.

3.12.44. At ExQ3 I asked NCC to confirm if they were content with the changes to the fCTMP regarding the approach to the redesign of the retained accesses in the GCC. I also queried the wording in the fCTMP with the Applicant in respect of how they had transposed NCC's suggested wording on a condition into the fCTMP. I also sought comments from the Host Highway Authorities on the Cumulative Impacts on Traffic Technical Note provided by the Applicant.

3.12.45. The Applicant confirmed the measures in the fCTMP with regard to NCC's suggested condition were commitments and amended the wording to reflect this. In relation to a joint CTMP the Applicant pointed to the wording in the fCTMP which at paragraph 7.6.1 indicates that the opportunity to combine mitigation will be explored and further details would be set out in the detailed CTMP or potentially a joint CTMP post consent when clarity on the construction programmes was available. The Applicant confirmed that the commitment suggested by Nottinghamshire County Council was included within the Deadline 4 fCTMP on this basis i.e. to provide a list of items that would be included within the detailed CTMP / potentially a Joint CTMP should the construction schedules for West Burton, Cottam and Gate Burton overlap.

3.12.46. LCC in its response [REP5-052] regarding the traffic Technical Note commented that in respect of the section on the shared grid corridor there is an indication that further work on this can be undertaken post Examination. Some clarification on the mechanism as to how this is expected to be captured and secured once the Examination is completed is required to give confidence this can be achieved.

3.12.47. NCC [REP5-054] commented that it was satisfied with the principle and content of the changes within the fCTMP. In relation to the Traffic TN it confirmed that it concurred with the conclusion of the report contained within Appendix D. The considered cumulative impacts of the developments fall well below the 30% threshold defined under Rule 1 of the IEMA, and consequently are not considered significant. It welcomed the co-operation agreement between the promoters of the four solar projects and their commitment to joint working to minimise disruption on the local highway through the use of shared access points and cable corridors.

3.12.48. Neither NCC or LCC, the highway authorities, submitted final position statements at deadline 7. WLDC submitted a statement outlining its final position [REP7-003] on various matters including transport issues. This included a general position that adequate cumulative assessment had not been undertaken on the various combinations of projects to obtain an understanding of relative impacts. The Applicant's position on this is that a worst-case scenario has been adopted which is the implementation of all schemes. WLDC maintains concerns that no surveys of existing usage

of public rights of way affected by the solar project appear to have been undertaken. Therefore, usage of PRoWs cannot be confirmed to enable an understanding of the indirect impacts upon users of PROW. WLDC states that Abnormal Indivisible Loads (AIL) vehicle trips should have been identified and assessed (including the cumulative assessment). WLDC states there is no justification to use construction access points from single lane minor roads whilst also proposing two two-way accesses from highways; the concern relating to the secondary access points. Also WLDC queried whether only the access from the A156 is necessary to construct the Proposed Development. WLDC confirms it does not question the ES or the fCTMP. Although it does also state that it does not provide sufficient detail to explain how management and co-ordination of construction traffic for cumulative impacts would be managed on a collaborative basis.

3.12.49. In relation to the final signed SOCG between the Applicant and the various host authorities these can be summarised as follows.

3.12.50. LCC [REP6-022] confirmed there were no areas of disagreement with the Applicant regarding the scope and methodology of the Applicant's Transport assessment (including the cumulative assessment). LCC has no concerns about the impact on users of the PRoW from an access perspective, recognising there will be a need for temporary closures and extensions during construction works. It was agreed this was addressed through the outline PROW Management Plan [CR1-034]. The parties also agreed that sufficient information was provided in respect of the design of the construction accesses for operational use as detailed in the technical note [REP2-045].

3.12.51. NCC and BDC jointly concluded a SoCG with the Applicant [REP6-013]. NCC states that the trenching of the underground cable would affect the PRoWs in the short term and request closures are employed sensitively to optimise the connectivity of the wider PROW network and any works that affect the safe use of the PROW should be closed temporarily under a formal Traffic Regulation Orders (TRO). The Applicant confirms that there would be no PRoW permanent closures as a result of the Proposed Development. All temporary closures are accompanied by diversions to maintain continuity of the PRoW during construction, An Outline PRoW Management Plan [CR1-034] has been prepared in support of the DCO application to demonstrate how PRoW would be managed safely during the construction, operation, maintenance and decommissioning phases. This has been updated for the Change Request due to the interaction with PRoW. These matters were all agreed.

3.12.52. NCC and BDC further confirmed that there are no areas of disagreement between them and the Applicant regarding the scope and methodology of the ES in relation to Transport and Access and that there are no areas of disagreement between them and the Applicant regarding the Proposed Development's impacts on transport and access. In relation to construction access arrangements the Applicant highlighted the fCTMP [REP6-011, REP6-011a] control document which would give NCC confidence over any issues. It also contained details of the proposed

arrangements to alter construction accesses to resize for operational use. These matters are noted as agreed in the SoCG. NCC also agreed that suitable temporary diversions and route management are proposed for all PRoW routes, so that suitable routes for any/ all users (including in the instance that these routes are relatively well used) would be available for the duration of the construction phase. There is therefore no requirement to establish usage of the PRoW. Access details for Cow Pasture Lane were also explained by the Applicant and NCC agreed this position.

3.12.53. WLDC [REP6-012] concluded a SoCG with the Applicant which identifies areas of agreement and disagreement. In respect of transport and access these are covered at section 10. In this regard it was agreed that the methodology for assessment was agreed and that NCC and LCC are the relevant highway authorities, relevant vehicle swept paths are set out in the fCTMP (including any necessary accommodation works), the fCTMP controls and identifies the hedgerow removal with associated accesses, and that the fCTMP is secured through Requirement 14 of the Draft DCO.

3.12.54. WLDC maintained its concern that there had been no usage surveys of the PRoW. The Applicant's position being the Highway Authorities had accepted the position that given the limited closures and rerouting and no closures and the short time period usage surveys were not required. This position was not agreed between the parties.

3.12.55. WLDC maintained concerns at the cumulative level of HGV movements. The Applicant referred to the cumulative traffic impacts technical note for a detailed assessment of the cumulative impacts and vehicle numbers. This is provided at appendix D to [REP6-041]. This sets out traffic flows on major roads in the locality and includes breakdowns for each scheme and in combination with Gate Burton it identifies the percentage change of flows on the major roads and demonstrates that the low percentage increase against the baseline would fall well below the 30% increase impact threshold in the IEMA guidelines and is therefore not significant.

3.12.56. In terms of AIL WLDC maintained its concerns that AIL trips should have been assessed. The Applicant points to the fCTMP [REP6-011 and REP6-011a] which provides the information which also includes details of swept paths including for AIL. The Applicant point to the fact that consent is required for AIL outside the DCO process and sufficient information has been provided at this stage. This matter is not agreed between the parties.

3.12.57. WLDC further maintained its concern that there was no justification for construction access points from single lane minor roads. The Applicant's position is that the majority of construction vehicle trips will travel to/ from the main site access on the A156 Gainsborough Road to access the primary construction compound using solely the A-road and B-road network. The fCTMP includes an HGV routing plan which shows that local roads and nearby villages will be avoided where possible, as well as mitigation to avoid and/or reduce impacts, relating to construction traffic including the delivery of materials during construction. Headstead Bank is

the only single lane minor road providing construction vehicle access to the Order limits (in this case the GCC during the construction phase). In order to provide suitable access a number of improvements and mitigation measures are proposed on Headstead Bank, as set out within the fCTMP. This position is not agreed by the parties.

3.12.58. Finally, WLDC is concerned that there is a lack of focus on cumulative traffic impacts during the construction phase within the GCC. It is concerned about the management and coordination of construction traffic for cumulative projects, and does not accept the fCTMP or Interrelationships report adequately address or control the matter. The Applicant points to Chapter 16 of the ES which also assesses cumulative impacts, and to the Interrelationships report [REP6-041] and in particular appendix D which provides a technical note on the assessment of cumulative traffic impacts which it considers addresses a worst-case scenario. The Applicant notes that a commitment to see a combined CTMP, where practicable, has been included within the fCEMP [REP5-023]. This would manage and mitigate cumulative effects if necessary once further details are known on project timeframes and the approach for the shared GCC. A firm commitment cannot be given on a Joint CTMP because the Gate Burton DCO cannot control the actions of other developers, there is uncertainty that all schemes will be developed and certainty overall project timescales. However, the Applicant is committed to seeking to prepare a Joint CTMP if practicable. The Applicant is uncertain why WLDC think this area has not had sufficient focus.

Conclusions on Traffic and Transportation

3.12.59. Given the matters discussed above and the responses in particular from LCC and NCC the statutory Highway Authorities for the relevant areas I find that the ES chapter 13 and the ES assessment is appropriate and meets the requirements of the national and local policies. No parties objected to the methodology approach or overall conclusions.

3.12.60. In general terms it was agreed and accepted that there would be no significant operational impacts associated with the Proposed Development and this also accords with the advice in the 2024 NPS EN-3 on operational activity with regard to solar farms.

3.12.61. Direct construction traffic impacts from the Proposed Development are concluded by the Applicant to not result in significant harm and matters related to the redesign of the construction accesses for operational use have been adequately addressed and secured through the fCTMP and fCEMP and the Highway Authorities are content with the approaches adopted.

3.12.62. In terms of the effects on PRoW access the Highway Authorities agree with the Applicant that there are no significant effects that arise. In particular this is as a result of the limited number of PRoW to be directly affected, the mechanisms in place to address any necessary diversions and that these are only for limited periods during construction. The fCTMP and Outline PRoW Management Plan would include mechanisms for the management of construction traffic in close proximity to PRoW

and to protect the safety of users. These are secured by Requirements 14 and 16 in the rDCO.

3.12.63. The resultant levels of HGV traffic in the locality have been the subject of significant concerns expressed by individual IPs and WLDC maintains its concerns particularly in respect of cumulative activity associated with the other solar schemes in the area. I deal with this in more detail below. However, the ES and TA demonstrate that the level of increase of vehicle movements on the main highways is substantially below IEMA thresholds which would identify a potential significant effect. There is no evidence before me to suggest that this analysis is incorrect.

3.12.64. In terms of general access of HGVs around the Solar and Energy Storage Park the main construction access is off the A156, a main A road and there are no significant concerns expressed around this from the Highway Authority. Some secondary accesses to satellite or smaller compounds have been identified but LCC does not raise any significant traffic hazard concerns or network impacts in respect of these. One of the minor accesses was removed with the Change Request which was on a narrower, more local road but in general even the secondary accesses are located off two-way roads. As the Applicant notes it is only Headstead Bank which is a single lane minor road and there are mitigation measures proposed in the fCTMP to address this. Given the lack of objection from the Highway Authorities, albeit WLDC maintains its concerns (Headstead Bank is in Bassetlaw), I find there is no evidence presented which demonstrates that there would be harm to the users of the Highway network.

3.12.65. In terms of AIL again WLDC maintains its concerns at the lack of assessment. However, I note that neither LCC nor NCC have any such concerns and are satisfied that these matters can be addressed through the notification and approval system for abnormal loads outside of the DCO process. Moreover, an assessment of the routing, road condition survey and remedial works that may be required are included within the submitted ES and appendices and the matters are included in the fCTMP which would be secured through Requirement 14 of the rDCO. This is consistent with the advice in 2024 NPS EN-3 which recognises the abnormal load approval process. I am satisfied that the matter has been adequately and proportionately addressed in the ES and that there are other processes and approvals which further safeguard the highway users.

3.12.66. The main concerns and matters that were the subject of most discussion during the Examination related to construction traffic and in particular around the cumulative effects with the other solar schemes in the locality, Cottam, West Burton and Tillbridge. WLDC as a general point has been concerned that the Applicant has not considered the Proposed Development along with various scenarios of implementation of one or more of the other schemes. The Applicant states that a worst-case scenario is all four coming forward together. WLDC is also concerned that there is no firm mechanism to explain and control collaboration between the developers of each of the schemes.

3.12.67. The Applicant in its worst-case scenario has provided details in the technical note at appendix D of [REP6-041] which demonstrates that the increase in flows on the network would be at a level that would be below a threshold that would indicate a significant effect, and substantially so. Both LCC and NCC have noted that they have no disagreement with the Applicant's assessments in the ES and have not put forward any countervailing evidence to seek to demonstrate that this is not the case. Similarly, WLDC has presented no evidence to undermine or challenge the conclusions of the Applicant in technical Highway terms. I therefore accept the position as put forward by the Applicant in this regard and conclude that the Proposed Development in association with the other solar schemes would not lead to an increase in traffic movements that would have a significant adverse effect on the highway network. Given that conclusion there is no further need to assess other scenarios, as if in the worst-case of all four occurring together there is no significant effect then a lesser number would have less effect.

3.12.68. In terms of a mechanism to control or require a joint CTMP I agree with the Applicant that this DCO cannot seek to control the actions of the developers of the other schemes. It is therefore not appropriate to require the Applicant to produce such a document. I am, however, conscious of the Applicant's commitment to collaborative working as addressed in [REP6-041] and which is further evidenced by the co-operation agreement signed between the various developers, a copy of which is included in the appendices of that document. Whilst these are only aspirational or matters that could be amended, or indeed the parties agree to remove the agreement they are at present in place and are material and relevant as are the actions of the developers to date including in terms of cooperating on the common GCC. I am further persuaded that changes to the fCTMP which include commitments to the matters to be included in the detailed CTMP and a commitment to explore the potential for a joint CTMP once further detail on the progress of the other schemes evolves post consent, gives further weight to this. Overall, whilst firm binding commitments cannot be made or included, the Applicant has gone as far as it can to include in the documentation the opportunity to facilitate the joint working and these would be considerations available to the Highway Authorities when they consider the Approval of the detailed CTMP under Requirement 14, and which I note WLDC has been identified as a consultee.

3.12.69. Overall, I am satisfied that the Proposed Development alone would not result in significant material harm to the Highway network or its users. That the assessment and conclusions of the ES are robust and the further TN provides a reasonably sound evidential base to conclude that there is no significant harm arising from the cumulative effects of the Proposed Development in association with the other schemes in the area including the other solar schemes. I am also satisfied that the fCTMP [REP6-011, REP6-011a], the fCEMP [REP5-023] and the OPRoWMP [CR1-034] provide suitable control mechanisms to ensure that any residual effects or required actions are secured, mitigated and managed. These are secured through Requirements 14, 12 and 16 respectively in the rDCO.

3.12.70. As I have identified that there would be no material harm to the highway network. I am satisfied that the Proposed Development is in accordance with National and local policies, and in particular the 2011 and 2024 NPS EN-1. However, I have not identified a positive benefit and therefore this does not affect the final planning balance.

3.13. WATER ENVIRONMENT (INCLUDING FLOODING)

Introduction

3.13.1. This Section addresses the likely effects of the Proposed Development on the water environment. It particularly looks at issues around water quality and flood risk.

Policy Considerations

National Policy Statements

3.13.2. Section 5.7 of 2011 NPS EN-1 indicates that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk.

3.13.3. In determining applications, 2011 NPS EN-1 advises that the SoS should be satisfied that the proposal also meets the requirements of the Water Framework Directive (WFD). In addition, it notes that where a project is likely to have effects on the water environment, applicants should undertake an assessment of the status of, and the impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment as part of their ES. Similar advice can be found in the updated 2024 NPS EN-1.

3.13.4. 2024 NPS EN-3 in relation to solar advises that where a Flood Risk Assessment has been carried out this must be submitted alongside the applicant's ES. This will need to consider the impact of drainage. As solar PV panels will drain to the existing ground, the impact will not, in general, be significant.

National Planning Policy Framework (NPPF)

3.13.5. Chapter 14 of the NPPF, under the sub-heading 'Planning and flood risk', seeks to avoid inappropriate development in areas at risk of flooding. Where development is necessary in such areas, the development should be made resilient for its lifetime without increasing flood risk elsewhere.

Development Plan Policies

3.13.6. Central Lincolnshire Local Plan policies S21 and S59, Bassetlaw Core Strategy policy DM12 and policy S20 address flood risk, water resources and water quality.

The Applicant's Case

3.13.7. Chapter 9 of the ES [APP-018] deals with the Water Environment and it is supported by the following figures and appendices:

- Figure 9-1: Water Resource Features and Attributes [APP-051];
- Figure 9-2: Fluvial Flood Risk [REP2-013];
- Figure 9-3, 3a, 3b and 3c: Surface Water Flood Risk [APP-053, APP-054, APP-055 and APP-056];
- Figure 9-4: Internal Drainage Board (IDB) watercourses and pumping stations [APP-057];
- Figure 9-5: Groundwater Flood Risk [APP-058]; and
- Figure 9-6: Reservoir Flood Risk [APP-059];
- Appendix 9-A: Water Framework Directive Assessment [APP-137];
- Appendix 9-B: Legislation and Planning Policy [APP-138];
- Appendix 9-C: Outline Drainage Strategy [APP-139, APP-140 and APP-141];
- Appendix 9-D: Flood Risk Assessment [APP-142]; and
- Appendix 9-E: Summary of Non-Significant Effects [APP-143].

3.13.8. An Outline Drainage Strategy has been prepared, Appendix 9C. Requirement 10 in the rDCO requires approval of a detailed drainage scheme substantially in accordance with the Outline Drainage Strategy before the authorised development may commence. An FRA has been submitted at Appendix 9D and a Water Frameworks Directive assessment has been submitted at Appendix 9A.

3.13.9. The study area falls within two WFD groundwater bodies. The far north and east extents of the study area fall within the Witham Lias groundwater body within the Anglian River Body Management Plan, while the remainder of the Proposed Development is covered by the Lower Trent Erewash – Secondary Combined groundwater body within the Humber River Body Management Plan. There are six WFD surface waterbody catchments within the study area. In addition to the WFD watercourses, there are several undesignated tributaries of these waterbodies present within the study area, along with drains, ditches and ponds.

3.13.10. The majority of the Solar and Energy Storage Park lies in Flood Zone 1, with areas of Flood Zone 2 and 3 running across the north-east corner of the Solar and Energy Storage Park and along the eastern border, both associated with Padmoor Drain. The majority of the GCC is in Flood Zone 3, associated with the river Trent and its floodplain. Development should not be located inside Flood Zone 3b (functional floodplain), unless it is classified as "essential infrastructure", has passed the exception test, and is water compatible in design.

3.13.11. During the construction phase the Applicant identifies the following adverse impacts have the potential to occur, it is assumed decommissioning impacts are similar in nature:

- Pollution of surface or groundwater due to deposition or spillage of soils, sediment, oils, fuels, or other construction chemicals, or through uncontrolled site run-off and foul waste water, or break out of drilling fluids when crossing watercourses using non-intrusive techniques;
- Potential impact on groundwater quality from piling and dewatering operations associated with watercourse crossings;

- Temporary impacts on sediment dynamics and hydromorphology within watercourses and waterbodies, e.g. where new crossings are required due to construction works to lay cables;
- Temporary changes in flood risk from changes in surface water runoff and exacerbation of localised flooding, due to deposition of silt, sediment in drains and ditches;
- Temporary changes in flood risk due to the construction of solar PV panels, site compound and storage facilities, which alter the surface water runoff from the Scheme; and
- Potential impacts on local water supplies.

3.13.12. During operation the Applicant identifies the following potential impacts:

- Impacts on water quality in affected water bodies that may receive surface water run-off or be at risk of chemical spillages from supporting infrastructure (eg substations, battery stores, solar stations, local site offices and car parking etc. and including the use of fire-water) and maintenance activities;
- Potential for reduced chemical loading of watercourses associated with the change in land use and the possible cessation of nitrate, pesticide, herbicide and insecticide applications on arable fields, which would be beneficial;
- Impacts on groundwater quality from creation of new pollutant pathways along any piled foundations;
- Impacts on flow in watercourses from structures impeding groundwater flow and baseflow to watercourses; including Solar PV struts, BESS and substation foundations, cable routes;
- Impacts on hydromorphology within watercourses and waterbodies where new crossings or drainage outfalls are required;
- Impacts on flood risk from increased runoff from new impervious areas across the site;
- Potential impacts on hydrology as a result of the Scheme by changing the way water infiltrates into the ground; and
- Potential for reduced irrigation of crops, if it is confirmed that water is abstracted locally for this purpose at the ES stage.

3.13.13. The Applicant identifies embedded mitigation measures including:

- Construction in accordance with a CEMP which will be secured through the rDCO Requirement 12 to be substantially in accordance with the fCEMP [REP5-023].
- A Water Management Plan (WMP) will be produced and is required as part of the CEMP.
- Operating in accordance with good practice guidance,
- Management of construction site run-off,
- Management of spillage risk (measures are included in the fCEMP),
- Management of flood risk (measures included in fCEMP),
- Horizontal Directional Drilling with avoidance areas identified in the Outline Design Principles [REP6-009],
- Management of open-cut crossings and access track crossings,
- Layout and design details including panel free areas and heights of panels, and
- The implementation of the surface and foul water drainage strategies.

3.13.14. The Applicant's Assessment of likely significant effects is undertaken at section 9.10 of the Chapter. These are identified in terms of construction (and decommissioning) and operation.

3.13.15. With regard to the River Trent, there is considered to be negligible potential for impact from works to install a cable beneath it given the mitigation measures in place, the distance of the launch/receiving pits from the banks and the size of the watercourse which would dilute and disperse any pollutants. For the very high importance River Trent, a negligible magnitude impact results in a temporary slight adverse effect (not significant). For HDD installation beneath Seymour Drain and Marton Drain and other low importance drainage ditches there would be no significant effect. For culverted water course crossings in the Solar and Energy Storage Park and the GCC there is nothing greater than a slight temporary effect which is not significant. For the six intrusive open cut crossings for the GCC there would again be short term, temporary adverse impacts on water quality, not significant.

3.13.16. A negligible indirect effect is predicted for the high importance River Till, Tributary of the Till and Skellingthorpe Main Drain this gives a temporary slight adverse effect (not significant). For the medium importance Padmoor Drain, Mother Drain, Causeway Drain, Littleborough Lagoon, Coates Wetland and Cottam Wetland this gives a neutral effect (not significant). For the low importance agricultural drainage ditches (those that aren't directly crossed) and small ponds, this results in a neutral effect (not significant).

3.13.17. For surface water bodies, morphology and ground water it is predicted overall, physical works are considered to give a localised moderate adverse impact against hydromorphological status for all open cut cable installation locations and for all culverted crossings for access tracks along the GCC as low importance receptors this is a slight adverse effect and not significant.

3.13.18. Foundations are predicted not to affect ground water flow and cable routes would be below the water table over parts of their routes and their profile is small, as such no impediment to base flows are anticipated.

3.13.19. In terms of Flood Risk from all sources the majority of the Solar and Energy Storage Park is in Flood Zone 1 and considered to be at low risk from fluvial flooding. However, construction activity in the north-east corner and eastern side of the site will involve works in areas of Flood Zone 2 and 3. The risk during construction can be adequately managed. The fCEMP will ensure no exacerbation of localised flooding from deposit of silt or other sediment in drainage ditches. Overall, it is concluded there would be no significant effect.

3.13.20. In relation to the GCC the majority of it is in Flood Zone 3 and considered to be at high risk. Should a fluvial flood event occur during construction, this could be a potential high risk to construction workers in the immediate vicinity (very high importance receptors). Flood risk could also be increased by ground compaction during construction and equipment

blocking flow if washed away. With the implementation of standard construction methods and mitigation as described the Applicant is satisfied this fluvial flood risk can be effectively managed. Flood risk from pluvial, ground water and artificial sources is considered low.

3.13.21. During operation drainage arrangements for the Proposed Development propose to attenuate surface water runoff and contain spillages from the operational area of the Solar and Energy Storage Park, whilst minimising flood risk to the site and surrounding areas. The Solar and Energy Storage Park impermeable area will remain largely consistent with its pre-development state as PV Panels are elevated above ground. Runoff from the PV Panels will alter the existing routing of runoff. To prevent ponding occurring around the panels, a series of boundary and routing swales will be constructed to convey surface water runoff away from the panels and towards infiltration basins to ground. With the implementation of the Drainage Strategy, the securing of the CEMP and best practice through the Outline landscape and Ecological Management Plan, including maintenance of the Sustainable Drainage System (SuDS) system the Applicant concludes there would be no effect on flow pathways from runoff from the Proposed Development.

3.13.22. Despite the mitigation approaches to softening the impacts of culverts and the delivery of equivalent length watercourse enhancement, a moderate adverse magnitude of impact to morphology is considered appropriate as a worst-case scenario from culverts within these agricultural ditches. However, as these are of low importance the effect is considered by the Applicant to be not significant.

3.13.23. On-site flood risk will be mitigated by raising the PV panels a minimum of 800mm above ground level (and potentially higher where required), and sequential location of compounds and battery storage facilities. It is, therefore, considered that there would be no change to the current scenarios, thereby resulting in a neutral effect (not significant). The Solar and Energy Storage Park will implement mitigation provided in the Outline Drainage Strategy in order to ensure no detriment to off-site flooding. It is assessed as very low risk from ground water, sewer or artificial sources and therefore no significant effect.

3.13.24. No part of the cable connection in the GCC is above ground; therefore, it is considered there would be a no change to future baseline conditions once the cable is installed and the land reinstated.

3.13.25. In terms of cumulative effects there is a potential for overlap between construction of adjacent developments and the Proposed Development. An assessment of the effects is set out at table 9-14 in ES Chapter 9. This concludes that with the implementation of best practice methods and the CEMP the potential residual effects would be neutral and there would be no significant effect in respect of each of the developments considered.

3.13.26. In terms of cumulative effects during operation the adjacent developments will all have drainage strategies taking this and the

Proposed Development's drainage strategy into account. Again it is identified by the Applicant that there is a neutral residual effect and no significant effect.

3.13.27. In terms of the GCC two scenarios are considered, firstly all three cables are installed in the same construction programme or secondly there is a sequential installation. Given, that each project will require its own working corridor with associated trench, it is assumed that regardless of which scenario is taken forward, that effect on flood risk and water quality would be temporary. As each project's ducts and cable run will be separate, then reinstatement post construction should result in a neutral cumulative effect.

3.13.28. Scenario 2 is likely to result in the potential for prolonged effects due to the greater period of time (up to five years). However, provided that standard and good practice mitigation is implemented on the construction sites through their respective CEMPs, appropriate watercourse enhancement provided to mitigate the use of culverts, and conditions of the relevant planning permission, environmental permits and licences enacted, as is being proposed for this Proposed Development, the cumulative risk can be effectively managed and there would not be a significant increase in the risks to any waterbodies.

3.13.29. During operation, there is no potential for cumulative effects, given there is no anticipated requirement for any works to the watercourses associated with the buried cabling.

3.13.30. For both Scenario 1 and Scenario 2 above, there is potential to have a joint construction planning, joint consultation/application with the Environment Agency and Trent Valley Internal Drainage Board for Flood Risk Activity Permits and Land Drainage Consent respectively. This approach would provide efficiencies and reduce the potential replication of effort by all parties.

Views of IPs

Host Authorities

3.13.31. LCC in its LIR [REP-043] comments that a Flood Risk Assessment (FRA) has been prepared and submitted as part of the DCO application documentation and the FRA concludes that the majority of the development is proposed outside areas with a risk of flooding and where development is proposed in areas susceptible to flooding there may be a requirement for mitigation measures to ensure no detrimental effect to flooding potential within or from the affected watercourses in the catchment once the scheme is operational.

3.13.32. LCC, as Lead Local Flood Authority for Lincolnshire concludes that the surface water Flood Risk is appropriately addressed at this outline stage in the ES; and suitable mitigation measures proposed in the CEMP. More detail would be needed on areas of the site which are proposed to be made impermeable and this could be captured by an appropriate

requirement. The Draft DCO includes an appropriate Requirement to ensure such details are provided.

3.13.33. In summary, subject to the development being carried out as proposed within the DCO application documents and further details being agreed as part of subsequent DCO Requirements, the Council as Lead Local Flood Authority for Lincolnshire, is of the view that impacts of this proposal would be neutral.

3.13.34. WLDC in its LIR [REP-053] sets out the impacts that are identified in the ES and in its conclusions states that there is a potential for several impacts from the Proposed Development where the cable corridor crosses the River Trent, Seymour Drain, Marton Drain and several unnamed watercourses. The ES states that GCC will be constructed beneath the channels of the watercourses via HDD techniques. This therefore causes there to be a potential impact to the water quality of the watercourses.

3.13.35. Whilst it is noted that there is an intention to work collaboratively with Cottam and West Burton on the cable corridor, there is no guarantee that the schemes will be constructed at the same time, this would mean that the watercourses could be impacted several times.

3.13.36. NCC in its LIR [REP-045] only identifies policy SO4 of the Waste Core Strategy on energy and climate as being relevant and which includes reference to waste facilities being located and designed to withstand likely impacts of flooding and policy SO2 which seeks to protect water quality amongst other matters.

3.13.37. BDC in its LIR [REP-038] identifies policy DM12 of the BCS 2011 related to Flood Risk, Sewerage and Drainage as relevant and comment that Nottinghamshire County Council is the Local Lead Flood Authority for Nottinghamshire, and therefore it is requested that the examiner assesses the response from Nottinghamshire County Council against the above policy. It also notes that the Environment Agency and other interested bodies such as Natural England will have submitted representations which again should be considered against Policy DM12.

Environment Agency

3.13.38. The EA's initial comments were received in its RR [RR-270]. The issues raised were addressed during the Examination and following further discussions with the Applicant and confirmed in a signed SoCG [REP6-018].

3.13.39. In relation to the Water Framework Directive and Flood Risk issues the EA's comments in its RR included the following. "*The Environment Agency would only permit the construction of new culverts where it has been demonstrated why culverting is both necessary and the only reasonable and practicable alternative. If it were to be demonstrated that culverts are necessary then we would welcome the WFD Assessment's statement (page 18) that "The addition of culverts will as a minimum require length for length watercourse enhancement as mitigation, and this will be described in a WFD Mitigation and Enhancement Strategy (to*

be developed post consent)". The WFD Mitigation and Enhancement Strategy should consider what impacts culverting would have on aquatic mammals, fish and eel species with key receptors clearly identified to those working on-site. Pre-construction, during and post-construction monitoring should inform the implementation of mitigation measures and its effectiveness. However, this document does not appear to be referenced in Schedule 2 (Requirements) so we would request further information on how submission of this document will be secured through the DCO.

3.13.40. *As part of the WFD Mitigation and Enhancement Strategy, temporary and permanent sustainable drainage systems (SuDS) should be designed and integrated, with clear links to site plans and risk procedures in a detailed drainage plan*.

3.13.41. *Measures to avoid sediment entering the watercourses should be confirmed within the Construction Environmental Management Plan (CEMP) and we welcome being a specific consultee on the detailed plan under Schedule 2, Requirement 12 (1)*.

3.13.42. *The Outline Design Principles document considers whether a culvert or open span bridge will be used for new ditch crossings. It concludes that this would be decided on a site-specific basis. We agree that culverts/culvert extensions should be designed to maintain connectivity along watercourses for aquatic species and riparian mammals. We support length-for-length watercourse enhancements to mitigate any detrimental impacts, and to ensure compliance against WFD objectives*.

3.13.43. *Whilst the photovoltaic panels will be sequentially located in flood zone 1, our interpretation is that some will be located in flood zone 3. Whilst likely to be negligible, there should be a consideration and calculation of the cumulative loss of floodplain volume from the posts supporting the photovoltaic panels and whether this loss needs to be reasonably compensated for as part of the proposals*.

3.13.44. *In summary, we can confirm that we have no objection to the principle of the proposed development, as submitted. The issues outlined above are all capable of resolution and we look forward to receiving additional information to resolve our outstanding concerns*".

3.13.45. In relation to these matters and the SoCG [REP6-018] the EA has agreed matters related to Flood Risk including in relation to easements and measurement locations and in terms of accepting that a sequential approach has been taken in locating the panel layout for all sources of flooding to avoid areas of flood risk. The BESS Compound has been sequentially located to flood zone 1. The layout has been amended in the north-eastern corner with panels removed from flood zones 2 and 3 associated with Padmoor Drain. This was secured in the Works Plans submitted with the application. Panels are raised a minimum of 800 mm above ground level to avoid floodwater. This is secured in the Outline Design Principles [REP6-009].

3.13.46. In terms of the GCC it was agreed that the EA made recommendations and the Applicant incorporated these in the fCEMP [REP5-023].

3.13.47. In terms of the WFD it was agreed that the WFD Assessment contains the required level of detail and correctly identifies watercourses which could be impacted and proposes the relevant mitigation.

3.13.48. In terms of water quality it was agreed that mitigation measures to control runoff and spillages that may contain polluting matter, and to reduce mobilisation of sediments and pollution where works are required in watercourses are included in the fCEMP. The fCEMP provides the structure and content for the detailed CEMP, which will be completed once a contractor is appointed. The fCEMP also secures the requirement for a WMP to accompany the detailed CEMP. The WMP will provide greater detail regarding the mitigation to be implemented to protect the water environment from adverse effects during construction. This will be agreed with the EA Land and Water team post consent.

3.13.49. The EA also commented and it was agreed that the PEIR report suggests that any low level risks to water quality will be able to be managed. There are unlikely to be significant risks to controlled water receptors as this is a predominantly undeveloped site. We are therefore satisfied with the information presented on ground conditions.

Trent Valley Internal Drainage Board (TVIDB)

3.13.50. TVIDB did not submit RRs at the start and the Applicant sought to conclude a SOCG with TVIDB [REP6-020], however, this was unsigned by the close of the Examination. It focused on the byelaw provisions that would need to be agreed and the detail of design matters. The Applicant notes it seeks to disapply certain provisions under the land drainage act 1991 and provide Protective Provisions for drainage bodies.

3.13.51. All points remained under discussion with the exception that TVIDB required that all water courses needed to be crossed by means of HDD and the Applicant agreed this was being done. Therefore, this point was agreed.

Upper Witham Internal Drainage Board (UWIDB)

3.13.52. UWIDB submitted a Relevant Representation [RR-281] and concluded a SoCG with the Applicant [REP2-022]. In this regard it is noted in the SoCG and agreed that the requirement for UWIDB consent is noted for any works to structures in the IDB area or extended area where the IDB acts as agent for the LLFA. The need for agreement over temporary works is also noted. It is agreed that these consents will be sought from UWIDB at the appropriate time, except to the extent the need for the relevant consent is dealt with in the draft DCO.

3.13.53. Various buffer requirements are agreed in terms of dimensions and measuring points and these are secured through the ODP and fCEMP. The Applicant noted, and the UWIDB agreed, that the Outline Surface Water Drainage Strategy provided in Appendix 9-C looks to mimic the existing

surface water flow regime as far as practical and reduce flood risk where appropriate. This will be developed into a detailed drainage strategy as a DCO requirement and will outline maintenance requirements in detail. A FRA has also been provided in Appendix 9-D which indicates no increase in flood risk as a result of the Proposed Development.

Other IPs

3.13.54. A number of individual IPs, parish councils and 7000 Acres raised matters related to flooding. Many of these were general in nature with concerns relating to the potential increased risk to flooding from run off from the solar panels and compacted ground. A number of the IPs submitted more detailed representations during the course of the Examination with more detailed concerns including from individual IPs and 7000 Acres these included [REP-081, REP-082, REP2-100, REP2-078, REP3-074, REP3-078, REP3-092, REP5-064, REP5-056, REP5-078, REP5-079 and REP5-80].

Examination

3.13.55. During the Examination I asked questions in my written questions and examined flooding issues at one of the sessions in ISH3.

3.13.56. In my ExQ1 [PD-006] questions I sought clarification on the Applicant's position on disapplication of environmental permitting (this is addressed in relation to the Draft DCO below), I sought to understand progress on Protective Provisions and sought clarity on the Flood Zones and the effect of panels in the higher category flood zones, I also sought clarity on launch and reception pits and details on impenetrable areas.

3.13.57. At ISH3 session 3 on other environmental matters I raised issue of flooding in relation to specific objections amongst other matters.

3.13.58. In response to my ExQ1 questions the Applicant confirmed that it had updated the DCO to take account of EA's comments on disapplication of statutory provisions. In terms of Protective Provisions discussions continued with relevant parties throughout the Examination and the final position is addressed in the rDCO comments below. The Applicant confirmed that the infrastructure within the Solar and Energy Storage Park has been located outside of Flood Zone 3. The evidence within the West Lindsey SFRA indicates that the Flood Zone 3 areas within the Solar and Energy Storage Park are considered to be Flood Zone 3a. The GCC is within Flood Zone 3. With the exception of where the cable crossing beneath the River Trent, the remaining area is considered to be located within Flood Zone 3a as the area is served by flood defences that have a Standard of Protection of a 1 in 100 year return period; therefore the majority of the floodplain does not function to convey flows during a 1 in 30 year return period.

3.13.59. In addition, the Applicant confirmed that the Environment Agency has not raised any concerns with the delineation of Flood Zone 3a/3b and does not consider flood risk a significant issue as per the signed Statement of Common Ground. A sequential approach has been taken in locating panels to avoid areas of flood risk for all sources of flooding. The

BESS compound has been sequentially located to flood zone 1. The layout has been amended in the north-eastern corner with panels removed from Flood Zones 2 and 3 associated with Padmoor Drain. This was secured in the Works Plans submitted with the application; therefore, no calculation is necessary. This has been documented and agreed within the final Statement of Common Ground between the Applicant and the Environment Agency.

3.13.60. At ISH3 session 3 [EV-008j] and in its summary of its oral submissions [REP3-027] at the hearing the Applicant addressed the concerns raised and referred to by Mr M Hare in [REP-082] which includes a copy of a note of the meeting the Applicant and Mr Hare had. In relation to any specific mitigation measures the Applicant stated these are not required but the Applicant continues discussion with the party.

3.13.61. In response to a query from an IP about the Applicant's maintenance schedules to keep watercourses running, including the River Trent, the Applicant confirmed it has various management plans for the duration of the Proposed Development, including the Outline Drainage Strategy (ODS) [APP-139, APP-140 and APP-141]. The ODS has been prepared and surface water runoff would be managed in accordance with the required planning policy. Climate change was also considered when preparing the ODS.

3.13.62. IPs also raised concerns about the water run off effect from the 'drip line' and suggested a potential increase in flood risk for residential properties along Kexby Lane. The Applicant referred to paragraph 3.3.4 within the ODS [APP-139] and also noted that the area at the drip line would not be compacted by vehicles due to the panel height in this location (0.8 m above ground level, therefore maintenance vehicles or access roads would not encroach on this area).

3.13.63. The Applicant noted that it is aware of the existing flooding that has historically taken place for the properties along Kexby Lane. The fOEMP [REP2-035] secures a number of relevant commitments for operational phase surface water management. Section 9.9 & 9.10 of Chapter 9 of the ES: Water Environment [APP-018] also confirms that with the adoption of the proposed management measures, the Proposed Development does not change the run off rates at the boundaries of the properties of the site.

3.13.64. WLDC in its post hearing submissions [REP3-044] noted the discussion but had no further comments to add. None of the other Host Authorities commented on flooding.

Conclusions on the Water Environment (including flooding).

3.13.65. Given the above and in particular no substantive issues have been raised or remain unresolved in respect of WFD matters I conclude that the Applicant's Appendix 9-A: Water Framework Directive Assessment [APP-137] provides for an appropriate assessment and identification of necessary mitigation. These matters are secured through the Framework CEMP [REP5-023], the FOEMP [REP2-035] and the oLEMP [REP5-031]

secured through Requirements 12, 13 and 7 respectively in the rDCO and therefore the Proposed Development would comply with the WFD.

3.13.66. In relation to flood risk I am satisfied that the Applicant's Appendix 9-D: Flood Risk Assessment [APP-142] is an appropriate FRA and meets the requirements of national policy set out in the NPS and NPPF.

3.13.67. The Applicant has undertaken and provided sufficient assessment and identified appropriate mitigation to address flood risk. The EA, IDBs and LLFAs do not raise any substantial matters related to flood risk on the site or elsewhere. There are concerns expressed in relation to flood risk in specific areas including on Kexby Lane and wider afield by individual IPs but it has not been demonstrated that the Proposed Development would exacerbate or lead to an increased flood risk in these areas. The Applicant has provided various control processes and included changes to the siting of solar panels within the Proposed Development to avoid areas of the highest flood risk. The proposed ODS and WMP along with other measures secured through the management plans demonstrate that there would be no increased flood risk beyond the site boundaries. I consider that the use of SuDS, swales and drainage channels, and onsite percolation through undeveloped ground would address surface water issues should they arise. The area beneath the panels would remain undeveloped and enable on-site percolation. The 'drip line' concerns were reasonably responded to by the Applicant.

3.13.68. There are no significant flooding cumulative effects in respect of the Solar and Energy Storage Park given the proposed mitigation measures and drainage strategy. Taken in association with other developments similarly implementing appropriate drainage schemes or strategies there is no anticipated cumulative effects and no such issues were raised by the EA or Host Authorities. In terms of the GCC in both scenarios, ie all three solar schemes are implemented together or the sequential scenario, three individual sets of ducts and cables, each requiring a maximum construction working width of between 25 m and 30 m, would be installed within a 100 m corridor. Given, that each project would require its own working corridor with associated trench, it is assumed that regardless of which scenario is taken forward, that effect on flood risk would be temporary. As each project's ducts and cable run would be separate, then reinstatement post construction should result in a neutral cumulative effect. I have had no evidence presented to contradict this position and the EA or LLFA have not objected on this basis and I therefore accept it.

3.13.69. In terms of the GCC west of the River Trent this is located in flood plain and a higher flood risk area but there is no lower flood risk area that could be used to achieve access to Cottam power station. The construction works are temporary and the land would be restored to its original levels there would therefore be no lasting effect on flood risk.

3.13.70. Although TVIDB did not conclude a SoCG with the Applicant I have no substantive objections from them in respect of flooding or water quality issues. In terms of UWIDB they did conclude a SoCG and again they do

not raise any significant concerns in regard to these matters. I consider that any residual matters are reasonably addressed through Protective Provisions.

3.13.71. Taking the above matters into account I am satisfied that the Applicant has sought to identify a site with the lowest risk from flooding. In this regard the Solar and Energy Storage Park is located primarily in flood zone 1 and within this area the Applicant has ensured that physical development is located away from the minor areas of flood zone 2 and 3 that exist within it. Whilst much of the GCC falls within flood zone 3a there is no alternative access to the Cottam substation that could reasonably avoid this flood zone area it is therefore the sequentially lowest flood zone area. In terms of the exception test the Proposed Development has wider sustainability benefits in the nature of its purpose and the Applicant has provided evidence to demonstrate that it would be safe for its lifetime and would not increase flood risk elsewhere. I am therefore satisfied that the proposed Development would meet the sequential and exception tests. The Proposed Development would be essential infrastructure, is not a more vulnerable use, would be flood resistant and resilient (with measures incorporated in the ODP to ensure these are secured) and provides for a suitable drainage system such that any residual risk can reasonably be managed.

3.13.72. Given the Framework Construction Environmental Management Plan [REP5-023], the FOEMP [REP2-035] and the oLEMP [REP5-031] secured through Requirements 12, 13 and 7 respectively I am satisfied that there would be no material harm that would arise as a result of effects on WFD water bodies or in relation to flood risk on the site or elsewhere.

3.13.73. On the basis of my conclusions matters related to the water environment (including flooding), both for the project alone and cumulatively, would comply with NPS, NPPF and local development plan policies and do not affect the planning balance.

3.14. OTHER MATTERS

Waste and Recycling

3.14.1. The Applicant as part of Chapter 15 [APP-024] Other Environmental Topics considered amongst other matters waste and recycling. The Host Authorities and particularly LCC and NCC as waste authorities were concerned with the robustness of the assessment undertaken. I asked questions during my written questions and issued a rule 17 request for further information on the matter [PD-017] seeking an alternative assessment of the effects. This sought a more detailed assessment under the IEMA guidance which had been adopted in relation to West Burton and Cottam Solar schemes The Applicant responded at deadline 6 [REP6-045] with a Technical Note (TN) that applies the methodology W1 from the Institute of Environmental Management & Assessment (2020) Guide to Materials and Waste in Environmental Impact Assessment as requested.

3.14.2. LCC and NCC commented in response to my Rule 17 at [REP6-048] and [REP6-049] respectively. They note that they have considered matters together and both responses have a similar concluding paragraph which notes that without any forecast of the expected waste arisings from the proposal, the Council is unable to comment how the proposal, and the other NSIP schemes collectively, would impact on capacity requirements in the Lincolnshire and Nottinghamshire areas. The Council would welcome the applicant in their updated waste assessment to identify potential tonnages of waste expected. When assessing any waste arisings figures, these should then be considered against the capacity forecasts in the Council's Waste Needs Assessment. This would lead to a potential understanding of future waste arisings and capacity requirements, which the Council could consider in any future Waste Plans.

3.14.3. LCC made further comment at [REP7-002] in which it concludes that in light of all the above the Council believes a more appropriate worst-case scenario, albeit being the absolute worst case, would be based on the assumption that no recycling capacity is available at decommissioning. On this basis, LCC identifies a major magnitude of impact and large effect resulting in a significant adverse effect for both operation and decommissioning. LCC provides alternative assumptions and suggest the Applicant should be asked to justify its assumptions.

3.14.4. In summary, the Applicant's TN concludes that when assessing waste generated by the Proposed Development using the Methodology W1 from the IEMA Guide, there are no new or different significant adverse effects identified when compared to the assessment presented in Chapter 15 of the ES. This is confirmed in the Applicant's closing submissions [REP7-001]. The Applicant adopts a realistic worst-case scenario maintaining current recycling rates and sending hazardous waste to national receptors and only identifies batteries as hazardous waste.

3.14.5. Given the long-term timescale under consideration there is significant potential for variability and variation, in conclusion the Applicant and Council's recognise that given the 60-year life span it is unrealistic to seek to quantify void capacity for decommissioning with any degree of certainty and this is reflected in the IEMA guidance.

3.14.6. The Applicant sets out its assumptions and explains its rationale, therefore, I am persuaded that the assessment and assumptions taken forward by the Applicant are reasonable in the context of the current capacities and the likely potential for changes in the sector over the longer term. The assessment concludes that there would be limited effect at the regional level and this is in line with the Cottam and West Burton conclusions, albeit the Applicant acknowledges that those assessments identify a more significant effect at the sub-regional level. Furthermore, Requirement 19 of the dDCO, which deals with decommissioning, includes a requirement for the submission and approval of a site waste management plan as part of the DEMP which would require further assessment and provide control at the point of decommissioning.

3.14.7. I therefore conclude that there are no significant effects clearly demonstrated but I also note the Applicant's final position that if the Secretary of State did determine there is the potential for likely significant effects from waste arisings from the Proposed Development, as presented in the Planning Design and Access Statement for the Gate Burton Energy Park, there is a critical and urgent need for development of large scale solar projects, and the benefits of the Proposed Development significantly outweigh any limited adverse effects.

Cumulative effects and interactions

3.14.8. Chapter 16 of the ES [APP-025] addresses cumulative effects and interactions. During the Examination the Applicant also provided a Joint Report on Interrelationships between Nationally Significant Infrastructure Projects, the latest version of which was submitted at Deadline 6 [REP6-041]. The Joint Report includes consideration of the cumulative effects impact assessment in the various NSIP schemes in the locality and how these were affected by updated information released into the public domain as the other projects evolved and the application information firmed up. Appendix E of the Joint Report is a review of the cumulative effects of all four schemes (the Proposed Development, Cottam, West Burton, and Tillbridge), a summary of the conclusions reached in respect of each of the effects for each scheme, the latest information available for each scheme and an explanation as to why this did not change/ alter the conclusions of the Environmental Statement.

3.14.9. Chapter 16 of the Environmental Statement assesses the potential for effect interactions and cumulative effects. These are defined as:

- **Effect Interactions** - the combined effect of impacts from the Proposed Development, which have been identified as part of the assessments reported within Chapters 6 to 15 of this Environmental Statement (ES), that are considered likely to result in a new or different likely significant effect, or an effect of greater significance, than any one of the impacts on their own. This can happen during construction for example, if a receptor is subjected to noise, dust, and visual impacts associated with site works; and
- **Cumulative Effects** – where there is the potential for two or more developments that are reasonably foreseeable and / or consented, but not yet forming part of the baseline environment, within close enough proximity to the Proposed Development to lead to cumulative effects on the same receptor.

3.14.10. The Applicant suggests the effect interactions from the Proposed Development on a single receptor may cause a greater effect than each in isolation. The Applicant at Appendix 16B [APP-182] produced an Effect Interactions Matrix to identify the potential for effect interactions to occur at receptors; those receptors that had more than one effect greater than negligible in magnitude are included in the tables. Tables 16-2 and 16-3 in Chapter 16 of the ES summarise the results during construction and decommissioning; no effects were identified during operation. The tables identify effect interactions during construction and decommissioning in relation to:

- landscape and visual amenity receptors also affected by noise and vibration;
- landscape and visual amenity receptors also affected with transport and access;
- landscape and visual amenity receptors also affected with socio-economics and land use transport and access and human health; and
- socioeconomic and land use receptors also affected by transport and access and human health.

3.14.11. For each receptor and each effect interaction for both construction and decommissioning, whilst there was some additional disturbance as a result of the effect interaction, it was concluded that this did not lead to significant effects. Therefore, the Applicant considered that no additional mitigation was required.

3.14.12. Chapters 6 to 15 of the ES include assessment of the cumulative effects derived from the short list of schemes identified in the ES Appendix 16A [APP-181]. Table 16-4 in the ES sets out a summary of the cumulative effects identified by the Applicant within each topic chapter of the ES. It includes an overall assessment of the cumulative effects in respect of potential impacts. It concludes that in relation to cultural heritage, the water environment, transport and access, human health, air quality, major accidents and disasters and waste that there would be no significant cumulative effects during construction, operation or decommissioning with embedded mitigation secured. The Applicant identifies two moderate adverse significant cumulative effects during construction and operation in relation to landscape which is subject to cumulative effects from the Proposed Development and the West Burton project, and which is subject to cumulative effects from the Proposed Development and the West Burton, Cottam and Tillbridge projects. These identify, firstly, an increased magnitude of change for LLCAs 05 and 06 which is assessed as medium magnitude on both and of moderate significance cumulatively. Secondly, locally at the scale of LLCA 06/LLCA 07 and LLCA 08 solar farms would represent a medium magnitude of change through addition and longevity such that effects on landscape character would be of moderate significance.

3.14.13. The latest version of the Joint Report on Interrelationships between Nationally Significant Infrastructure Projects which was submitted at Deadline 6 [REP6-041] includes a review of the conclusions of the cumulative assessment. It states that the ES conclusions are not altered by the refinement of the projects through the Examination period as these refinements remain within the bounds of what had been assessed in the ES.

3.14.14. I have, for each of the principal issues identified, considered both the effect interactions and cumulative effects of the Proposed Development and other schemes identified in the short list in Appendix 16A of the ES and any other identified in the subject chapters in the area, which include the other solar NSIP schemes. My conclusions are set out in the relevant Sections of this Report. My conclusions have had regard to the information submitted during the Examination including the latest

submission of the Joint Report on Interrelationships between Nationally Significant Infrastructure Projects at Deadline 6 [REP6-041].

3.14.15. The Applicant's conclusions in the ES identify significant moderate adverse cumulative effects for two landscape and visual amenity receptors during construction, operation and decommissioning and I agree with these conclusions. I have also concluded that impacts to archaeology would be moderate adverse but would be mitigated by the proposed written scheme of investigation as secured by requirement 11 of the rDCO (at section 3.6 of this Report). I have also identified a moderate adverse health impact due to the increase in the GP ratio (paragraph 3.7.51 of this Report) and a moderate adverse effect which I attach moderate weigh against granting the Order in the balance in respect of BMV. As can be seen therefore I have in some instances ascribed greater magnitude of effect and greater weight than the Applicant.

3.14.16. The Applicant acknowledges an increase in disturbance on receptors for landscape and visual amenity and noise and vibration during construction but concludes this does not lead to a likely significant effect interaction. Therefore, no additional mitigation is required. The fact that the Applicant identifies further disturbance associated with the interaction of these effects does suggest that there is an added effect. However, the moderate adverse effect on landscape is not raised to such an extent that it would increase its magnitude to the next level given that the noise and vibration effect is only minor adverse not significant with which I have agreed. I therefore conclude there would be no material increase in the significance of effect in respect of this issue resultant from effect interactions. Similar considerations would apply for decommissioning.

3.14.17. In relation to landscape and visual amenity receptors also affected with socio-economics and land use, transport and access and human health, the Applicant identifies moderate adverse effects for landscape and visual and minor adverse for the others during construction. The Applicant suggests that with the implementation of the various management plans, including in relation to OPRoWMP and the CTMP, the effects would not intensify or be significant. I have concluded the management plans would provide sufficient mitigation to ensure impacts would not be intensified by the interactions with each other, similarly for decommissioning.

3.14.18. Considering the effect interactions above, I am satisfied with the Applicant's conclusions within each topic Chapter and that with embedded mitigation secured, there would not be an increase in intensity or an additional effect that would weigh against the development.

3.14.19. In relation to cumulative effects with other developments I have considered these in the individual aspect issues having regard to the effects of other schemes including the other solar NSIP schemes in the area. My conclusions on the Proposed Development in respect of those matters are set out in the relevant Sections of this Report above.

3.14.20. Overall and I am satisfied that the combination of both effect interactions and cumulative effects between the short list of schemes in the locality have been taken into account in reaching my conclusions. The Applicant has sought to introduce collaboration with the developers of the other solar NSIP schemes, not least through the shared GCC which also facilitates shared communication and consultation potential and has sought to embed the potential for further collaboration in the fCTMP. Whilst there may be some effect interactions that would occur, for example, landscape and visual amenity and noise and vibration, I am satisfied that there are no significant effects from effect interactions between differing effects on receptors, such that would increase the intensity and magnitude of effect. I agree with the Applicant's conclusions of the assessment of cumulative effects where two significant cumulative effects are identified on landscape and visual receptors.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This Chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoSESNZ), 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 4.2: Examination matters
- Section 4.3: HRA conclusions.

4.1.3. The Habitats Regulations are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these Regulations are referred to as Habitats Regulations Assessment.

4.1.4. I have considered all documentation relevant to HRA as required by the NPS and have taken it into account in the conclusions reached in this Report, any relevant sections in the planning issues and in the overall case for development consent. Furthermore, project design and mitigation proposals included in the ES and secured in the Applicant's preferred DCO have been fully considered for HRA purposes.

4.1.5. 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.

4.1.6. The term 'European sites' includes Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), proposed SACs, potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above.

4.1.7. I have been mindful throughout the Examination of the need to ensure that the SoSESNZ has such information as may reasonably be required to carry out their duties as the Competent Authority. I have sought evidence from the Applicant and the relevant IPs, including Natural England as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

REIS and Consultation

4.1.8. I produced a Report on the Implications for European Sites (RIES) [OD-005] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination

representations up to Deadline 4 (03 October 2023). The RIES was issued to set out my understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 25 October 2023 and 20 November 2023. Comments were received from the Applicant [REP5-047] at Deadline 5 (20 November 2023). These comments have been taken into account in the drafting of this Chapter.

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

Proposed Development Description and HRA Implications

4.1.10. The Proposed Development is described in Chapter 1 of this Report.

4.1.11. The spatial relationship between the Order limits of the Proposed Development and European sites is not shown on a Figure as European sites were considered by the Applicant to be outside of the Zone of Influence (ZoI).

4.1.12. The Proposed Development is not directly connected with, or necessary to, the management of a European site.

4.1.13. The Applicant's assessment of effects is presented in the following application document(s):

- Habitat Regulation Assessment [APP-223] referred to hereafter as the HRA Report

4.1.14. During the Examination, the Applicant submitted a Change Request as described in Chapter 1 of this Report. These changes were accepted by the ExA as described in Chapter 1 of this Report.

4.1.15. The HRA Report was not updated during the Examination.

4.1.16. The Applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area (EEA) States in its HRA Report [APP-223] and/or within its ES: Chapter 5 EIA Methodology [APP-014]. Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the Examination.

4.2. EXAMINATION MATTERS

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 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

4.2.2. The Applicant's HRA Report [APP-223] did not identify any European site(s) within the UK National Site Network within the ZOI. The Applicant concluded that there was no possibility of an impact pathway and a screening assessment for LSE was not undertaken. Natural England (NE) agreed with these conclusions at D1 [REP-009].

4.2.3. At Deadline 1 [REP-089] IPs raised concern that impacts from Electro-Magnetic Fields (EMF) to ecology had not been considered in the ES or the HRA; the assessment of EMF in ES Chapter 14 [APP-023] only assesses effects on human receptors.

4.2.4. I asked the Local Planning Authorities and Environment Agency (EA) [PD-006; PD-009] to confirm whether they agree that there would be no LSE from EMF, and for the Applicant to further justify the conclusion of no LSE from EMF in Chapter 14, paragraph 14.8.2.

4.2.5. Bassetlaw District Council [REP2-047] and Lincolnshire County Council [REP2-050] agreed that the Applicant's conclusions on impacts from EMF in Chapter 14 were sound. Nottinghamshire County Council [REP2-053] and West Lindsey District Council [REP2-057] provided no comment on the matter.

4.2.6. The EA [REP4-063] identified sea lamprey (*Petromyzon marinus*) and river lamprey (*Lampetra fluviatilis*), as features of the Humber Estuary SAC that utilise the River Trent for migration and spawning where the Proposed Development's 400kV cable would cross the River. The EA requested that the Applicant [REP4-063] undertake a risk review to determine if there was an impact pathway from EMF to features of the Humber Estuary SAC both alone and in-combination with other projects.

4.2.7. Section 2.3 of the RIES [OD-005] provides further detail on the above and associated questions for the EA, NE and the Applicant in Table 1.1 of the RIES.

4.2.8. After the publication of the RIES, the Applicant provided a risk assessment of impacts from EMF in Appendix A of [REP5-047] at Deadline 5. This concluded that the risk of impacts from EMF on fish is negligible based on the depth of the cable. This is proposed to be buried at a minimum of 5m below the riverbed. This is described in the Outline Design Principles [REP6-009] which is secured by Requirement 5 and through identification as a certified document in Schedule 13 of the Draft DCO [REP6-024]. Table 1-1 of Appendix A [REP5-047] demonstrates that the EMF values at 5m beneath the river would be below the permitted public exposure limits and this is 4m more than National Grid's (2015) recommended minimum burial distance of 1m to reduce EMF exposure. The strength of the magnetic field is inversely proportional to the distance away from the cable. Additionally, paragraph 3.1.3 of Appendix A of [REP5-047] states that impact potential is further reduced considering the tidal nature of the river, the wider context of the watercourses and the transitory nature of species within it.

4.2.9. The EA agreed with the conclusion of the Risk Assessment in the Statement of Common Ground submitted at Deadline 6 [REP6-018]. NE has not commented on this matter.

4.2.10. I am satisfied, on the basis of the information provided, that no impact-effect pathways to European sites exist and there is no potential for LSE either alone or in-combination with other plans or projects.

4.3. HRA CONCLUSIONS

4.3.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoSESNZ.

4.3.2. A LSE assessment was not deemed to be required by the Applicant as no impact pathways were identified to European Sites; no European sites are located within the ZoI. The EA [REP4-063] considered there was a potential impact pathway to features of the Humber Estuary SAC from EMF. However, following the Applicant's submission of a risk assessment [REP5-047] demonstrating that an impact on fish was negligible, the EA agreed in its Statement of Common Ground that this impact pathway could be excluded [REP6-018].

4.3.3. The ExA's findings are that, subject to the minimum depth at which the cable would be buried beneath the River Trent being secured in the DCO, no impact pathways exist to European sites either alone or in-combination with other plans or projects. The ExA considers that there is sufficient information before the SoSESNZ to conclude that no LSE assessment is required.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This Chapter provides a summary of the conclusions reached in respect of the principal issues and an evaluation of the balance of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 2 and individual applicable legal and policy requirements identified and considered in Chapters 3 and 4. It applies relevant law and policy to the application in the context of the consideration and conclusions reached on the facts and issues set out in Chapter 3. Whilst consideration of the HRA issues have been documented separately in Chapter 4, relevant facts and issues set out in that Chapter are also taken fully into account.

5.1.2. The statutory framework for deciding NSIP applications where there is no relevant designated NPS is set out in section 105 of the PA2008. In deciding the application, the SoS must have regard to:

- any LIR submitted before the deadline specified under s60(2) of the PA2008.
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

5.1.3. In light of my conclusion on the case for Development Consent in this Chapter, Chapter 6 focuses on the Applicant's proposals for Compulsory Acquisition and related matters, followed by consideration of the draft Development Consent Order (dDCO) in Chapter 7. I reach an overall recommendation as to whether or not Development Consent should be granted for the Application in Chapter 8.

5.2. SUMMARY OF FINDINGS AND CONCLUSIONS

5.2.1. This Section summarises the conclusions reached on the planning issues assessed in Chapter 3, including the need for the Proposed Development, and the HRA included in Chapter 4. I have not included document references in this summary because full references have been provided in Chapters 3 and 4.

Principle of Development

5.2.2. I am satisfied that the Proposed Development would make a material contribution to the generation of low carbon energy. The amount of electricity produced is of a scale commensurate with the size and scale of the Proposed Development. The CCA2008 places a duty on the SoS to reduce the net UK carbon account for 2050 to at least 100% lower than the 1990 baseline. I consider that the Proposed Development would make a modest contribution towards meeting that target and the legally binding commitment to end the UK's contribution to climate change. As

such the Proposed Development would contribute to the urgent need for low carbon energy and the legal obligation to achieve net zero.

5.2.3. The Proposed Development has suitably considered potential alternatives and as a large-scale ground mounted deployment would, in association with other solar provision, including on rooftops and buildings, contribute to the Government's objective of 70GW by 2035. The implementation of such schemes in association with other methods of solar deployment would be required to achieve the 70GW target of energy being generated by solar by 2035.

5.2.4. The Proposed Development therefore has demonstrated that it would be in accordance with 2011 NPS EN-1, 2024 NPS EN-1 and 2024 NPS EN-3 including assisting in meeting the urgent need, and which in more recent Government policy is identified as a Critical National Priority, which are important and relevant considerations. I therefore afford the demonstrated need, likely deployed generating capacity and likely electricity generated as having great positive weight in the final planning balance.

Environmental Impact Assessment (EIA)

5.2.5. No substantive submissions were made which raised concerns about the overall adequacy of the EIA or the ES. I consider the ES and associated information submitted by the Applicant by the close of the Examination has provided an adequate assessment of the environmental effects and meets the requirements of the EIA Regulations. The ES is sufficient to describe the Rochdale Envelope for the Proposed Development and to secure its delivery within that envelope through the provisions of a made DCO.

Habitats Regulations Assessment considerations

5.2.6. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided. Having regard to the location of the Proposed Development, I am content that it would not have any likely significant effects for any European sites.

5.2.7. In reaching the overall conclusion and recommendations in this Report, I have considered all documentation relevant to HRA.

5.2.8. The SoS is the competent authority under the Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment. Having taken into account the advice from NE, I am satisfied that there is sufficient information before the SoSESNZ to enable them to conclude that an AA is not required.

Air Quality

5.2.9. I note that there is some potential for construction and decommissioning activities to impact on air quality, including from the production of dust. However, I also note that these are likely to be temporary and short-term.

5.2.10. Furthermore, I note that the embedded and additional mitigation proposed would prevent or minimise the release of dust and/ or prevent it from being deposited on nearby receptors during construction. I am satisfied that, with these measures in place, there would be no significant effects as a result of changes to air quality during the construction, operation or decommissioning phases. The relevant measures are set out in the fCEMP and are secured by Requirement 12 of the dDCO.

5.2.11. I have found that no Air Quality thresholds would be breached and the Proposed Development would accord with designated NPS and national and local planning policy. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development and therefore does not affect the final balance.

Biodiversity Ecology and Natural Environment

5.2.12. There are no internationally affected sites within the ZoI and none would be affected. Consideration of HRA issues, set out at Section 4 of this Report, concludes there would be no European sites affected, there are no significant issues identified. There are limited residual effects on skylarks due to loss of habitat, however, additional and embedded mitigation is employed to ensure there would be no significant effect.

5.2.13. Overall, in terms of ecology, biodiversity and the natural environment I am satisfied that the mitigation hierarchy has been reasonably applied. The Proposed Development design incorporates avoidance of the most sensitive locations and embedded mitigation, secured in the design and through the ODP, identifies appropriate avoidance and mitigation measures. Where there have been minor adverse effects identified, these have been reduced through additional mitigation. Overall, the avoidance, mitigation and enhancement measures have resulted in no residual adverse effects in respect of ecology. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development and therefore does not affect the final balance. I further conclude that there is no adverse effects resultant from effects on ancient woodland, or EMF and these do not affect the planning balance.

5.2.14. The Proposed Development would result in BNG and this is secured through Requirement 8, which requires the submission of a BNG strategy, and Requirement 7, which secures the oLEMP. I afford the BNG moderate positive weight for the reason given above in Section 3.4.

Climate Change

5.2.15. I agree with the Applicant's conclusion in the ES that the Proposed Development would result in a positive benefit with the carbon savings demonstrated. In the context of the ES's significance table this means the project's net GHG impacts are below zero and it would cause a reduction in atmospheric GHG concentration, whether directly or indirectly, compared to the without-project baseline. A project with beneficial effects substantially exceeds net zero requirements would have a positive climate impact. I give this great weight in the overall balance.

Historic Environment

5.2.16. There are no designated heritage assets within the Order limits and no direct physical impacts to any designated heritage assets have been identified. However, the Proposed Development has the potential to adversely affect the settings of a number of designated and non-designated heritage assets as well as non-designated below ground archaeology.

5.2.17. I consider the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that the extent of the likely impact can be understood. In my view, the application meets the requirements of 2011 NPS EN-1, 2024 NPS EN-1, the NPPF, PPG and local development plan policy in that regard.

5.2.18. I am satisfied that with the mitigation measures secured (through the AMS secured through Requirement 11) including the additional mitigation, the Proposed Development would not result in significant adverse effects to any of the designated heritage assets identified.

5.2.19. I have concluded that in respect of the non-designated heritage assets, including below ground remains, some 10 assets would be affected to a moderate adverse significance of effect. However, additional mitigation is identified to address this through archaeological excavation and recording which again would be controlled through WSIs secured through the AMS, which reduces the effect to not significant.

5.2.20. Nevertheless, notwithstanding the mitigation measures proposed and a lack of significant effect to designated heritage assets, heritage policy in the NPSs and NPPF refers to harm to heritage assets. The Proposed Development would therefore result in some harm to a number of designated heritage assets. In relation to non-designated heritage assets, archaeological assets, it also identifies moderate adverse effects albeit this is mitigated.

5.2.21. When deciding an application that affects a listed building or its setting, Regulation 3 of the Infrastructure Planning (Decision) Regulations 2010 requires the decision-maker to have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. In addition, when deciding an application affecting a scheduled monument the decision-maker must have regard to the desirability of preserving the scheduled monument or its setting.

5.2.22. Furthermore, the NPSs, the NPPF and relevant development plan policies make clear that great weight is to be given to the conservation of historic assets and any harm to, or loss of, significance of a designated heritage asset should require clear and convincing justification.

5.2.23. I afford any harm to heritage assets great weight, but this is to be balanced against the benefits of the Proposed Development according to the scale of the harm and the nature of the asset. I conclude that whilst there would be some harm to a number of designated heritage assets

(Segelocum Roman town, Roman fort south of Littleborough Lane, Medieval Bishops Palace, Stow Park, Heynings Priory scheduled monument, Fleet Plantation moated site, The group of designated assets in Gate Burton non-designated parkland, Church of St Mary Grade I listed building in Stow and Benedictine Abbey and College scheduled monument) and of non-designated archaeological assets, and afford these harms great weight, it would be mitigated by embedded mitigation and additional mitigation measures and where residual harm remains compensated through recording. I conclude that this harm would be less than substantial. Taking account of the urgent need for low carbon generating capacity which can be delivered at pace, coupled with the benefits of the Proposed Development, I find the resultant harm is clearly outweighed by the wider public benefits of the proposal. I therefore consider the resultant harm attracts a moderate amount of negative weight in the overall planning balance.

Human Health and wellbeing

5.2.24. In terms of human health and wellbeing I have identified that there are adverse effects resultant from a significant increase in the patient to GP ratio in the area. This, however, would be for a limited period during construction, and potentially decommissioning. The overall effect may be moderated by working from home practices, the age profile of the work force and would be dependent on the cumulative effects which are dependent on the degree of overlap with the construction periods of the other solar schemes in the area. I therefore conclude this is a moderate adverse health impact to weigh in the overall balance.

5.2.25. I am satisfied that there would be no adverse impact resultant from exposure to EMF and that with the operation of the various management plans including the maintenance of the PRoW and fCTMP, secured through Requirements 16 and 14 respectively, that any adverse effects on accessibility, isolation or preclusion for access to health benefits from accessing the countryside would be limited and mitigated and as such would not weigh negatively in the balance in relation to health impacts. However, a lack of harm in this respect does not weigh positively in favour of the Proposed Development and therefore does not affect the final balance.

Landscape and Visual

5.2.26. I conclude that the Proposed Development would result in material harm to the landscape character of the area arising from an adverse effect on the AGLV and two LLCA around the Solar and Energy Storage Park and associated with the scale of the development and extent of coverage of the industrial use in an otherwise agricultural landscape.

5.2.27. I have further concluded that the cumulative effect of the Proposed Development in association with the other solar schemes in the area (Cottam, West Burton and Tillbridge) would lead to additional harm and would through sequential experiences contribute to a greater awareness of solar development in the locality which at a local scale would be harmful.

5.2.28. The harm would be greatest during construction and would reduce over time with landscaping maturing but there would remain a material and significant adverse residual effect on the character of the area.

5.2.29. In terms of the visual amenities of the area I conclude that the Proposed Development would result in material and harmful effects during construction for local residents, users of PRoW and road users. Again, these would reduce as landscaping matures but there would remain areas where the Solar arrays would be visible and this harm would remain during the lifetime of the Proposed Development. I am satisfied that longer distance views from the Jurassic ridge would be limited and not significant due to distance, landform and landscaping.

5.2.30. I am satisfied that the Applicant has sought to take on board principles of Good Design and that these have been successfully integrated into the Proposed Development and secured and that these have resulted in avoidance and mitigation where necessary and appropriate.

5.2.31. The harms I have identified taken together should be afforded moderate weight in the overall balance as NPS EN-1 (2011 and 2024) indicate that energy schemes are large and likely to result in some effects. I am also conscious that my conclusion is based, in part, on the adverse effect on an AGLV, a local designation, which NPS EN-1 (2011 and 2024) advises locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

5.2.32. I am mindful that the site does not fall within any designated landscape and is for the most part reasonably contained by landform, hedging and woodland. The impacts identified would be reasonably localised when considered on a county basis. The adverse effects would also be reversible upon decommissioning, albeit that is some 60 years in the future. I attach moderate weight to the harms to landscape and the visual amenities of the area that I have identified in the overall planning balance.

Major accidents and disasters

5.2.33. I am satisfied that the rDCO contains sufficient measures to secure and control battery safety through the BSMP through Requirement 6. That the Outline Battery Safety Management Plan is a robust and sufficiently flexible document to ensure that a final BSMP and ERP are provided and that through consultation with the relevant FRSs in the area these would be effective documents that would mitigate the risk.

5.2.34. The conclusion of Protective Provisions in relation to LFRS gives further confidence that it would be provided with sufficient resource to effectively monitor and engage with the operators of the site, such that fire safety and concerns of risk to the population and environment are adequately mitigated.

5.2.35. I see no reason that the identified risk cannot be suitably managed and mitigated through the safeguards and checks during final design, installation and thereafter in operation.

5.2.36. Overall, I consider that the information and analysis provided satisfies the EIA Regulations in respect of major accidents and disasters and would not be in conflict with national or local planning policy in this respect.

5.2.37. Nevertheless, a lack of harm in this respect does not weight positively in favour of the proposal and therefore does not affect the final balance.

Noise and Vibration

5.2.38. I am satisfied that the Applicant has adopted a robust, consistent, reasonable and proportionate approach to the assessment of noise and vibration and has made appropriate proposals for necessary mitigation in compliance with NPS EN-1 (2011 and 2024), 2024 NPS EN-3 and NPS EN-5 (2011 and 2024).

5.2.39. Any effects that arise in terms of construction or decommissioning would be temporary and the assessment indicates would be short term and could be reasonably managed by way of BPM, exclusion zones, appropriate administrative and management approaches and through effective communication. These are all matters secured in the ODP and appropriate management plans and which are secured through Requirements attached to the rDCO.

5.2.40. Accordingly, I conclude that the application accords with the Government's policy on noise and vibration as set out in NPSs, the NPSE NPPF and local planning policy. Therefore, I consider the effect would not result in significant adverse effects and would not affect the overall planning balance.

Socio-economic and Land-use (including agricultural land and Best and Most versatile land (BMV)

5.2.41. I find that the Applicant has had adequate regard to the socio-economic, and other land use impacts of the Proposed Development, including on BMV. The evidence indicates some material harmful effect in relation to BMV, which is justified but no significant adverse impacts on, PRoW or mineral resources are likely to arise from the Proposed Development and there would be a limited positive benefit to employment and the local economy.

5.2.42. The loss of any BMV agricultural land is to be discouraged, policy also requires justification. I am however satisfied that the loss has been justified nevertheless the temporary loss of approximately 155ha overall over the construction period, 73ha over the operational period of 60 years (given the 6.2ha which is in exclusion zones) and a maximum of 2ha permanently is an adverse effect of the Proposed Development. I accept that the Applicant has sought to minimise the impacts on BMV agricultural land. I find that where BMV agricultural land would be lost, the Applicant has sought to avoid and where its use would be necessary provided sound and compelling justification for its use. As such, while it would result in harm, I consider that harm attracts a moderate amount of negative weight in the overall planning balance.

5.2.43. Accordingly, I am satisfied that the application accords with the guidance set out in 2011 NPS EN-1, 2011 NPS EN-5, 2024 NPS EN-1, 2024 NPS EN-3 and 2024 NPS EN-5 in this respect. Likewise, I find no significant conflict with the policies set out in the NPPF or local development plans.

5.2.44. I give a moderate negative weight to the negative impact resultant from the effect on BMV and a little positive weight to the limited positive benefit to employment and the local economy, but the other effects in terms of socio-economic and land use matters do not affect the final planning balance.

Traffic and Transport

5.2.45. I am satisfied that the traffic and transport assessment set out in the ES and additional Technical Note meets the requirements of 2011 NPS EN-1, 2024 NPS EN-1 and 2024 NPS EN-3. I am also content that it accords with the NPPF and local development plan policies.

5.2.46. I do not underestimate the identified temporary effects during construction and decommissioning but find that these would be appropriately mitigated by measures to be secured in the detailed fCTMP, fCEMP the PRoWMPand the fDEMP secured by the rDCO.

5.2.47. I am satisfied that the Proposed Development would not result in significant material harm to the highway network or its users. Moreover, I am satisfied that the assessment and conclusions of the ES are robust and the further Technical Note provides a reasonable evidence base to conclude that there would be no significant harm arising from the cumulative effects of the Proposed Development in association with the other solar schemes in the area. The fCTMP, the fCEMP, the OPRoWMP and the fDEMP provide suitable control mechanisms to ensure that any residual effects or required actions are secured, mitigated and managed. These are secured through Requirements 14, 12, 16 and 19 respectively in the rDCO.

5.2.48. As I have identified that there would be no material harm to the highway network or its users, I am satisfied that the Proposed Development is in accordance with National and local policies. I have not identified a positive benefit and therefore this does not affect the final planning balance.

Water Environment

5.2.49. An appropriate FRA, meeting the requirements of NPS EN-1 (2011 and 2024), has been carried out. Furthermore, I consider that the Applicant has provided sufficient information on flood risk to meet the requirements of NPS EN-1 (2011 and 2024) and that no further mitigation in respect of flooding is necessary beyond that set out in the ODS and WMP secured through the fCEMP, fOEMP, oLEMP which are secured through Requirements 12, 13 and 7 in the rDCO.

5.2.50. Drainage matters and the activities of statutory undertakers are reasonably addressed through Protective Provisions.

5.2.51. Given the fCEMP the fOEMP and the oLEMP are secured through Requirements 12, 13 and 7 respectively, I am satisfied that there would be no material harm that would arise as a result of effects on WFD water bodies or in relation to flood risk on the site or elsewhere.

5.2.52. On the basis of my findings and conclusions on matters related to the water environment, including that the scheme is compliant with the WFD it passes the sequential and exception tests and is acceptable in terms of impacts of flooding overall, I find these do not affect the planning balance.

Other matters

5.2.53. I have concluded that there are no significant effects clearly demonstrated in respect of waste and recycling, taking the Applicant's assumptions, receptor areas and available knowledge on void capacity into account and having regard to the unpredictable end state given the long timescale until decommissioning.

5.2.54. On the basis of my findings and conclusions on matters related to waste and recycling do not affect the planning balance.

5.3. THE PLANNING BALANCE

5.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to:

- The LIR submitted by NCC LCC BDC and WLDC;
- any matters prescribed in relation to development of the description to which the application relates, including the Infrastructure Planning (Decision) Regulations 2010; and
- any other matters which I think are both important and relevant to the SoS's decision, this includes 2011 NPS EN-1, 2024 NPS EN-1, 2024 NPS EN-3, 2011 NPS EN-5 and 2024 NPS EN-5, the NPPF and policies of the local development plans.

5.3.2. In weighing factors in the planning balance I have weighted factors on the following scale a little/ moderate/ great and for neutral it is 'does not affect the balance'.

5.3.3. The purpose of the Proposed Development is a low carbon energy generation project and in this regard it contributes to the Government's commitment to achieve net zero as set out in legislation. The latest designated NPSs, albeit they do not have effect in respect of this application, make clear that there is an urgent need for additional electricity generating capacity. The Proposed Development would support the growth of renewable energy, contribute to energy security, network resilience and a secure, flexible energy supply. I consider it would make a meaningful contribution to the UK's transition to low carbon energy generation and there would be significant carbon savings. These benefits I afford great positive weight.

5.3.4. The proposal would provide for Biodiversity Net Gain, with the potential for significant gains for particular habitats. This is secured through the rDCO in Requirements 8 and 7. The reports guarantee a minimum 10% but identify that significantly greater outcomes are predicted. Given the management plans secured through the rDCO I am confident that these predictions will be achieved and there are mechanisms in place to monitor, manage and respond over the lifetime of the Proposed Development if they are falling short. They are not, however, guaranteed and therefore I have reduced the weight I afford to the benefit to moderate.

5.3.5. There is a limited positive benefit to local employment which would have a limited positive effect on the local economy I afford this little positive weight.

5.3.6. I have found that the Proposed Development would result in less than substantial harm to the setting of both designated and non-designated heritage assets (archaeology) albeit that these would be mitigated or compensated. However, as already noted, while I afford great weight to the conservation of these assets, I consider the overall level of harm would be less than substantial and would be outweighed by the wider public benefits. Consequently, I consider this should be afforded a moderate amount of negative weight weighing against the making of the Order.

5.3.7. There are adverse effects resultant from a significant increase in the patient to GP ratio in the area. Whilst this is moderated to some extent by the nature of the work force and other factors this is a moderate adverse health impact to which I ascribe a moderate negative weight weighing against the making of the Order.

5.3.8. I have concluded that the Proposed Development would result in harm to an AGLV and two LLCA and would overall have landscape harms including in combination with other NSIP schemes in the area through sequential observation of the schemes and the landscape becoming more industrialised. I also identified harms associated with the visual amenities of the area for local receptors. I have had regard to the temporary nature of the Proposed Development which is for 60 years equating to a generational change and therefore only moderates the impact to a certain extent. Nevertheless, at the end of the lifetime there is a decommissioning process and the land would be returned to an undeveloped agricultural/ rural landscape. Furthermore, as landscape planting matures and is maintained this would reduce the effects and landscape and visual harms. Overall, therefore I ascribe a moderate negative weight weighing against the making of the Order.

5.3.9. The Proposed Development would have a negative impact on approximately 155 ha of BMV. Discounting the GCC, which would be restored following development and therefore only be affected for a very short time and the approximately 6ha of area in panel exclusion zones in the Solar and Energy Storage Park this would reduce to 73 ha affected for the lifetime of the Proposed Development and approximately 2ha

affected permanently. The loss of BMV must be robustly justified and Applicants should seek to avoid the highest quality agricultural land using previously developed, industrial or lower grade agricultural land first. I am satisfied that the Applicant has sought to do this and justified the use of BMV. However, there is still a significant area of BMV affected. Given the above factors I attribute this moderate negative weight weighing against the making of the Order.

5.3.10. I have concluded that there are also a number of issues which do not weigh against the Order to any material degree and which therefore do not affect the planning balance. These are:

- Air Quality;
- Ecology (excluding BNG), including the effects on ancient woodlands and EMF.
- Other Human Health factors other than as referenced above, including the use of PRoW and EMF;
- Major accidents and disasters including battery safety and operation of the Energy Storage System;
- Noise and vibration;
- Other socio-economic effects;
- Traffic and transportation, including the use of the Highway network and PRoW;
- Water Environment, including flooding; and
- Waste and recycling.

5.3.11. I have in the consideration of each aspect Chapter and principal issue had regard to the cumulative effects associated with the Proposed Developments and other developments in the locality including the other potential solar NSIP schemes. I have also had regard to the effect interactions and the potential for increases in intensity and magnitude of effect through combinations of effects. These matters are integral to my considerations and conclusions reached above.

5.3.12. As set out above the application falls to be decided under s105 of the PA2008. Section 105(2) requires the SoS to have regard to any LIR submitted to the SoS before the specified deadline for submission, any matters prescribed in relation to development of the description to which the application relates, and any other matters which the SoS thinks are both important and relevant to the decision. The SoS also has a statutory sustainable development duty, under s10 of the PA2008, to have regard to mitigating and adapting to climate change.

5.3.13. I conclude that none of the matters which I have weighed against the Order being made, either in isolation or in combination, outweigh the significant benefits that I have identified.

5.3.14. Moreover, I am fully satisfied that all adverse effects would be mitigated as far as possible through controls secured through the rDCO and that the identified adverse effects would be of time-limited duration and reversible.

5.3.15. Considering the identified adverse effects as a whole and where there are related conflicts with policies in the development plan, I consider that the final balance weighs strongly in favour of granting Development Consent.

5.3.16. WLDC has raised concerns about the Applicant's assessment of cumulative effects arguing that there should be an assessment of all the possible or potential scenario of combinations between all of the proposed NSIPs, the Proposed Development, Cottam, West Burton and Tillbridge. I am satisfied that the Applicant has undertaken a worst-case scenario in considering the effects in the ES as is required. I have concluded on the basis of the information before me that the balance of the decision weighs strongly in favour of granting development consent. In this regard I have considered the cumulative effects at each of the principal issues and I am satisfied that even having regard to the cumulative effects from all schemes and all the effects in-combination that the balance falls as I have concluded. It therefore follows that if there were a lesser combination of schemes the effects would be reduced and no greater than those I have considered. This is true for the issues individually and in-combination.

Critical National Priority (CNP)

5.3.17. 2024 NPS EN-1 albeit not in effect for this application is an important and relevant consideration for the Secretary of State. It has recently been designated and therefore is a statement of Government policy. It has extended the policy of CNP from that originally identified in earlier drafts to cover all low carbon electricity generation, which includes solar. Paragraph 3.3.62 notes the Government has concluded that there is a CNP for the provision of nationally significant low carbon infrastructure. Section 4.2 sets out the policy in respect of CNP.

5.3.18. I am satisfied that the Applicant has applied the mitigation hierarchy through its site selection, development parameters secured through the ODP and the mitigation secured through the ODP and various management plans secured through the rDCO. These together have sought to avoid areas where the greatest impacts may arise, incorporated embedded mitigation and avoidance into the Proposed Development's design and applied additional mitigation where appropriate and if residual effects remain identified compensation. This is done on an issue by issue basis and highlighted in each chapter of the ES. I am therefore satisfied this meets the Applicant's assessment requirements in respect of CNP, which requires the application of the mitigation hierarchy.

5.3.19. In respect of the Infrastructure Planning (Decisions) Regulations 2010 I have had regard to regulation 3 in respect of listed buildings and scheduled monuments.

5.3.20. On the basis of the above the CNP presumption would apply. This states that where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will

be refused on the basis of these residual impacts. None of the identified exceptions which are set out at paragraph 4.2.15 of 2024 NPS EN-1 in my judgement are engaged.

5.3.21. As a result, the NPS advises the Secretary of State will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances. None of the non-exhaustive list apply to this case albeit I have concluded that the public benefits of the case outweigh the less than substantial harm to designated heritage assets which could be construed to fall within this advice.

5.3.22. There are no exceptional circumstances that I have identified and therefore the CNP policy would suggest that any adverse residual impacts are unlikely to outweigh the urgent need for this type of infrastructure.

5.3.23. I have concluded above that I consider that the final balance weighs strongly in favour of granting Development Consent. Therefore, whilst the CNP policy does not change that conclusion, and it is not of direct effect in this application, it is an important and relevant matter and adds further support and weight to my conclusion on the acceptability of the Proposed Development.

5.4. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

5.4.1. For the reasons set out in the preceding Chapters and summarised above, I find that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent is made out. I carry this conclusion forward to my consideration of CA and TP proposals and objections to these in Chapter 6 and in my consideration of the dDCO in Chapter 7.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land, including Statutory Undertakers' (SU) land. The proposal includes a cable connection to Cottam power station along a GCC, which crosses the tidal River Trent via Horizontal Directional Drilling below the river which is Crown land.

6.1.2. This Chapter discusses whether the evidence before the Examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing my conclusions and recommendations.

6.1.3. Land over which CA or TP powers are sought is referred to in this Chapter as the Order land.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The request for CA and TP powers is made through the inclusion of Part 5 'Powers of Acquisition' in the Applicant's dDCO and other provisions.

6.2.2. The powers sought within the application of the dDCO are:

a. all interests in land, including freehold (Article 20 in the dDCO) – shown edged red and shaded pink on the Land Plans;
b. permanent acquisition of new rights (including restrictions) (Article 22 in the dDCO) - shown edged red and shaded blue on the Land Plans;
c. temporary use of land to permit construction or maintenance where the Applicant has not yet exercised powers of compulsory acquisition (Articles 29 and 30 in the dDCO) – shown edged red and shaded green on the Land Plans;
d. extinguishment and/or suspension of rights (Article 23 in the dDCO) and overriding of easements and other rights (Article 26 in the dDCO) – shown edged red on the Land Plans.
e. authority to acquire land and rights from Statutory Undertakers, and to extinguish or suspend their rights, and to remove or reposition their apparatus (Article 31).

6.2.3. The final version of the dDCO was submitted at Deadline 6 [REP6-024] which is the Applicant's preferred version (the preferred DCO).

6.2.4. At the conclusion of the Examination the application was supported by the following documents:

- Book of Reference (BoR) [REP6-031].
- Land Plans [CR1-014].
- Works Plans [CR1-009].

- Streets, Rights of Way and Access Plans [CR1-010 and CR1-011]].
- Crown Land Plans [CR1-015].
- Statement of Reasons (SoR) [CR1-020].
- Funding Statement [CR1-028].
- Schedule of Negotiations and Powers sought [REP6-029].
- Objections of Compulsory Acquisition Schedule [REP6-036]
- Statutory Undertakers Schedule [REP6-038].

6.2.5. Taken together these documents set out the land and rights sought by the Applicant, together with the reasons for their requirement and the basis under which compensation would be funded. References to the BoR and the Land, Works, Crown Land and Streets, Rights of Way and Access Plans in this Chapter from this point should be read as references to the latest revisions which are cited above.

Additional Land

6.2.6. The Planning Act 2008 (PA2008) requires that if changes are sought to the application, the changes, whether material or non-material, must be considered and accepted or otherwise by the ExA. If the changes accepted into the Examination involve CA of additional land and the consent to the provision in the DCO authorising such CA of all persons with an interest in that land is not obtained by the Applicant, then the provisions of the Infrastructure Planning (CA) Regulations 2010 (CA Regulations) will apply.

6.2.7. Section 1.7 of this Report details a material change, involving the inclusion of additional land around Cottam power station for changes to facilitate the arrangements for cable connection to the power station and access arrangements. The land, the subject of this change, included additional land beyond the original Order limits. The Applicant had not obtained consent of the landowner to compulsorily acquire this land as there were various interests involved, including unregistered land. Therefore, the CA Regulations will apply for the new plots of land.

6.2.8. The Examination process is set out above in Section 1.6 of this Report and along with Section 1.7 on the changes to the Application includes reference to the holding of additional hearings in respect of the additional land including an additional Compulsory Acquisition Hearing (CAH).

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 [CR1-020], supported by the Schedule of Negotiations and Powers Sought [REP6-029] and the BOR [REP6-031]. In summary, the Applicant explains that in the absence of powers of CA, it might not be possible to assemble all of the land within the Order limits, uncertainty will continue to prevail and the Applicant considers that its objectives and those of Government policy would not be achieved.

6.3.2. The Applicant advises at paragraph 5.1.2 of the SoR voluntary agreements have been secured for all land for Solar PV panels (Work No.1) at the point of the application and good progress has been made in

relation to the remainder of the Order land. The Schedule of Negotiations and Powers sought [REP6-029] is set out by persons with an interest, the plots they have an interest in, the interest to be acquired or TP and the purpose for which the plot is required in relation to the works specified in the dDCO, along with the status of the negotiations.

6.3.3. The Applicant further explains, at paragraph 5.1.4 of the SoR that notwithstanding where an agreement has been reached, it is necessary for the Applicant to be granted the CA powers included in the dDCO so as to protect against a scenario whereby contracts are not adhered to or otherwise are set aside, for example: (i) the freeholder owners of the land within the Order land (where agreement has been reached) do not grant a lease of the land in accordance with the terms of the completed option agreements; or (ii) the contracting party dies, is subject to divorce proceedings, or is declared insolvent. In those circumstances, it would be in the public interest for the Proposed Development to proceed and the interests in question effectively converted into a claim for compensation. The Applicant also advises it needs powers to extinguish and/or suspend rights and override easements and other rights in the Order land to the extent that they would conflict with the Proposed Development.

6.3.4. Having compared the Works Plans, Land Plans, BoR, and Schedule of Negotiations and Powers Sought carefully, I am satisfied that each area of land and plot affected by CA or TP is required for the carrying out of one or more of the works identified in Schedule 1 of the preferred DCO or their maintenance.

6.4. LEGISLATIVE REQUIREMENTS

6.4.1. CA powers can only be granted if the conditions set out in section (s) 122 and s123 of PA2008 are met, and the relevant guidance in Guidance Related to Procedures for the Compulsory Acquisition of Land, September 2013 (the Former Department for Communities and Local Government (DCLG) (the CA Guidance) sets out the purpose for which CA may be authorised.

6.4.2. S122(2) of the PA2008 requires that land subject to CA must be required for the development to which the development consent relates, or must be required to facilitate or be incidental to that development, or is replacement land which is given in exchange for the Order land under section 131 or 132. The CA Guidance states that in respect of land required for development the land to be taken must be no more than is reasonably required and proportionate.

6.4.3. S122(3) of the PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily. The CA Guidance advises for this condition to be met, the Secretary of State (SoS) will need to be persuaded that there is compelling evidence that the public benefit derived from the CA would outweigh the private loss that would be suffered by those whose land is to be acquired.

6.4.4. An order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that one of the conditions in s123(2) to (4) is met. These are:

- The application includes a request for CA to be authorised - 123(2).
- All persons with an interest in the land consent to the inclusion of the provision – 123(3).
- The prescribed procedure is followed – 123(4).

6.4.5. I am satisfied that the condition in s123(2) is met because the application for development consent includes a request for CA of the land to be authorised and thus one of the conditions is met.

6.4.6. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with the legal duties on decision-makers:

- All reasonable alternatives to CA must have been explored.
- The applicant must have a clear idea of how it intends to use the land subject to CA powers and to demonstrate that adequate funds are likely to be available to meet the compensation liabilities that might flow from the exercise of CA powers.
- The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with human rights of those affected.

6.4.7. These matters were tested in the Examination and are reported on below.

6.4.8. Section 127 of the PA2008 applies to Statutory Undertakers (SU) land. S127(2) and (3) state 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. 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 SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order limits. These are set out in the BoR [REP6-031].

6.4.9. Section 135 (1) of the PA2008 requires that an order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if:

a. it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
b. the appropriate Crown authority consents to the acquisition.

6.4.10. Section 135 (2) requires that an order granting development consent may include any other provision applying in relation to Crown land, or

rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.4.11. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an Order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the PA2008 is relevant to SUs with land and equipment interests within the Order limits.

6.4.12. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.

6.5. EXAMINATION OF THE CA AND TP CASE

6.5.1. The Examination of the Proposed Development included consideration of all submitted written material relevant to CA and TP. All relevant guidance and legislation is taken into account in the reasoning below and relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.

6.5.2. I asked questions of the Applicant and Affected Persons (APs) in ExQ1 [PD-006], ExQ2 [PD-009] and ExQ3 [PD-013]. In addition, I held a CAH [EV-005b and EV-005d] where the issues were explored in further detail. As referred to above the Applicant also made, and I accepted, a Change Request which resulted in additional land. I therefore scheduled a further CAH to deal with the additional land [EV-010].

Written Processes

6.5.3. In ExQ1 [PD-006] (ExQ1.5.1 – Q1.5.13), I sought further information on the proposed funding, site selection, land ownership (including in relation to unknown owners (and attempts made to identify them)), and updates on the progress of discussions with APs, including SUs and Crown interests.

6.5.4. I also sought further information and clarification on Category 3 parties' interests and on whether any residential properties were affected.

6.5.5. In ExQ2 [PD-009] and ExQ3 [PD-013], I sought further information from APs on their position regarding their interests, and requested updates from the Applicant about ongoing discussions, including with SUs and the Crown Estate.

Hearings

6.5.6. During the Examination, I held a CAH [EV-005b and EV-005d] at which the Applicant was invited to briefly outline the case for CA and TP and how it meets the tests of the PA2008. I held a session to Examine the Applicant's General case, consider Crown Land and SU's land and interests and the Applicant's Funding.

6.5.7. APs were provided an opportunity to be heard and comment on the process and on the rights sought and provisions proposed in the dDCO and SUs were afforded an opportunity to raise or expand on any concerns or objections.

6.5.8. I also sought to examine the individual cases from objections received.

6.5.9. I programmed a second CAH [EV-010] following the Change Request as the CA Regs were engaged. No other parties than the Applicant attended so I sought some clarification and updates from the Applicant to be put to the next Deadline and closed the hearing after a short period.

Site Inspections

6.5.10. My approach to site inspections is set out in Chapter 1 above (paragraphs 1.6.19 to 1.6.22). In summary, I visited a number of the sites affected by the Applicant's CA/ TP proposals either unaccompanied, or as part of the ASI, including the additional land brought forward through the Change Request.

6.5.11. Taken together, this has provided me with a good understanding of the location of the affected plots as well as any above ground infrastructure.

The Applicant's case

6.5.12. The Applicant's case for the CA and TP powers sought is set out in section 5 (Source and scope of powers sought in the DCO) section 6 (Purpose of the powers) and section 7 (Justification for the CA powers) of the SoR [CR1-020] and the Applicant explains how it considers its proposals meet the tests set out in s122. It also describes how the Applicant considers it has demonstrated compliance with the general considerations in the CA Guidance.

6.5.13. In summary, the Applicant explains that it has included CA and TP powers in the dDCO to enable the Applicant to protect the Proposed Development, to mitigate impacts of the Proposed Development where necessary, and in order to ensure the Proposed Development can be built, operated and maintained. It comments that in the absence of these powers, the Order land may not be assembled, uncertainty will continue to prevail, and its objectives and Government policy objectives would not be achieved.

6.5.14. The Applicant explains that in its view the SoR [CR1-020], the Planning, Design and Access Statement [REP6-004 and REP6-006] and the Explanatory Memorandum [REP6-027], set out the factors that the Applicant considers demonstrate that the conditions in section 122 of the

PA 2008, and the considerations set out in the CA Guidance, are satisfied (with the exception of the availability of funding, which is demonstrated in the Funding Statement [CR1-028]).

6.5.15. In particular, the Applicant asserts those documents demonstrate that the Proposed Development would:

a. help meet the urgent need for new energy infrastructure in the UK, providing enhanced energy security and supporting UK Government priorities in relation to economic development and security of supply;
b. deliver additional renewable energy capacity, supporting the achievement of the UK Government's climate change commitments and carbon budgets;
c. minimise or mitigate adverse impacts to an acceptable degree; and
d. comply with NPS EN-1, NPS EN-3, NPS EN-5, Draft NPS EN-1, Draft NPS EN-3 and Draft NPS EN-5 which are important and relevant factors under section 105 of the PA 2008. The Applicant's comments pre-dated the designation of the draft NPS which came into force after the close of the Examination but which were not substantially amended from the draft NPSs.

6.5.16. In relation to permanent acquisition, the Applicant explains the areas in which freehold acquisition is sought are for the Solar and Energy Storage Park Site for the solar PV panels, on-site substation and BESS plus other associated development such as cabling. The Applicant states it has only included powers to compulsorily acquire the freehold interest in land where other powers (such as to acquire new rights or take temporary possession) would not be sufficient or appropriate to enable the construction, operation or maintenance of the Proposed Development.

6.5.17. In terms of temporary use, the Applicant explains it will not be necessary for the Applicant to permanently acquire rights and interests, but instead be authorised to temporarily possess and use land, as shown on the land plans. The Applicant also explains it is seeking temporary use powers over all other land within the Order land, in order to allow it to take temporary possession ahead of acquiring land or rights permanently. The reason for this is that it allows the Applicant to enter on to land for particular purposes (including site preparation works) in advance of any vesting of the relevant land/rights enabling the Applicant to only compulsorily acquire the minimum amount of land and rights over land required to construct, operate and maintain the Proposed Development. The Applicant confirms all parties were made aware of this provision during their negotiations.

6.5.18. The Applicant states that the scope of the powers of compulsory acquisition proposed in respect of the land within the Order land goes no further than is needed. All the land included within the Order land is needed to achieve the identified purpose of delivering the Proposed Development. The Schedule of Negotiations and Powers Sought [REP6-029] shows the powers being applied over each plot and the requirement for each plot of land demonstrating the assessment that has been carried out on each plot.

6.5.19. Overall, I am satisfied that the Applicant has demonstrated that the land is needed and would be no more than is reasonably required for the Proposed Development. Furthermore, I am also satisfied that all of the land included is required either for the development (including associated development which I address in Chapter 1 at 1.3.9 – 1.3.16), to facilitate it or is incidental to it. As such, subject to my further consideration of plots affected by outstanding objections/ representations in Section 6.6 below, I consider the test set out in s122(2) of the PA2008 to be met.

6.5.20. In relation to section 122(3), the Applicant points to a number of public benefits including the need for the Proposed Development which would ensure meaningful and timely contributions to UK decarbonisation and security of supply, while helping lower bills for consumers throughout its operational life, which is critical on the path to Net Zero. The Applicant states that without the Proposed Development, a significant and vital opportunity to develop a large-scale low-carbon generation scheme will have been passed over, increasing materially the risk that future Carbon Budgets and Net Zero 2050 will not be achieved.

6.5.21. In addition to meeting the urgent national need for secure and affordable low carbon energy infrastructure, the Applicant notes the Proposed Development will deliver other benefits, many of which have been maximised and will be delivered as a result of the Proposed Development's careful design including:

- The provision of biodiversity net gain, as set out in the Biodiversity Net Gain Assessment [APP-230].
- Employment during the construction and operational phases. It is expected that a total of 363 total net jobs per annum will be created during the construction period. It is also anticipated that there will be up to fourteen permanent full time equivalent (FTE) staff during the operational phase working on a site and flexible office basis, and
- A Skills, Supply Chain and Employment Plan [APP-228] will be prepared prior to the commencement of construction. This will set out measures that the Applicant will implement in order to advertise and promote employment opportunities locally associated with the Proposed Development in its construction and operational phases.

6.5.22. The Applicant acknowledges that there would be a private loss by those persons whose land or interests in land is compulsorily acquired and that the Proposed Development may result in some adverse effects to the environment and local community. However, it is considered by the Applicant that these (considered individually or collectively) would not outweigh the important nationally significant benefits of contributing towards the urgent national need for secure and affordable low carbon energy infrastructure. The Applicant also points to the fact that compensation is available, but that is not a matter before me.

6.5.23. The Applicant concludes that there is a compelling case in the public interest for the power to compulsorily acquire land and rights over land (together with the imposition of restrictions) to be included in the Order. Moreover, it concludes there is also 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. The Applicant also considers that the extent of the Order limits is no more than is reasonably necessary for the construction, operation and maintenance of the Proposed Development and therefore any interference with private rights is proportionate and necessary.

6.5.24. I have considered the need case above and in my overall conclusions in respect of the planning case where I identified a significant national need and that any residual harms that arise are outweighed by the benefits of the Proposed Development. My conclusions here need to be consistent with my conclusions earlier. Although 7000 Acres was concerned that the need issue did not demonstrate a compelling case to support CA because the need case had not been made out, I have found that it was adequately made out.

6.5.25. Overall, and subject to my further consideration of the plots affected by outstanding objections/ representations in Section 6.6 below, I agree with the Applicant and I am satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. I am therefore satisfied that the test set out in s122(3) PA2008 is met. I am also satisfied, for the same reasons, that the case for TP (recognising that it is broadly drawn) is also made out.

Alternatives

6.5.26. The CA Guidance indicates that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.

6.5.27. The Applicant's approach to the consideration of alternatives in relation to CA is set out in section 7.5 of the SoR [CR1-020]. It notes that the Applicant has considered all reasonable alternatives to compulsory acquisition: negotiated agreements, alternative sites and modifications to the Proposed Development have been considered prior to making the application. The Applicant's use of compulsory acquisition powers is intended to be proportionate. Where practicable, lesser powers of temporary possession would be used.

6.5.28. In section 7.6 of the SoR [CR1-020] the Applicant comments on the alternatives to the Proposed Development that have been considered. It notes a no development scenario is not a reasonable alternative. In terms of the location and extent of land and rights, the Applicant advises this has been carefully considered and designed in order to take the minimum amount of land required whilst ensuring that the Proposed Development continues to meet the project benefits. According to the Applicant, none of the alternatives or modifications considered for the Proposed Development would obviate the need for powers of compulsory acquisition and temporary possession over the Order land.

6.5.29. In the context of site selection, the Applicant notes the point of connection of the Proposed Development to the National Grid was a key

criterion, with a target 8km radius from existing National Grid infrastructure.

6.5.30. A feasibility study and site selection process was undertaken, as detailed in Chapter 3 of the ES [APP-012] comprising four stages:

a. Stage 1 – identification of a 8km area of search for potential solar development sites based on operational criteria associated with the fixed point of connection. Constraints were mapped to 15 km to also capture potential constraints close to the area of search;
b. Stage 2 – within the study area identified in Stage 1, exclusionary and discretionary planning and environmental criteria were applied to discount land within the area of search unsuitable to locate the solar scheme;
c. Stage 3 – of the land that remained within the area of search after Stage 2, a series of key operational inclusionary criteria were applied such as site size, land assembly, site topography, access requirements and availability of brownfield land. In summary, this stage identified land suitable for solar development; and
d. Stage 4 – comprised a desktop assessment and evaluation by environmental and planning specialists to consider the identified locations. This process identified the most suitable land opportunities that were potentially available for the siting of a solar scheme should the land be available for development.

6.5.31. In response to my question 3.5.3 raised in ExQ3 [PD-013], which sought further information in terms of considerations given to alternatives to the GCC alignment to address concerns raised by individual AP objectors (which I deal with below) the Applicant produced a report detailing the options considered for the grid connection routing [REP5-048]. This considered 5 options which affect the Objectors' interests. It concluded that options 1 and 2 which were within the existing GCC and Order limits were marginally more favourable from an environmental perspective and that none of the options would avoid compulsory acquisition of land. Options 3, 4 and 5 would affect more landowners who would be more resistant to those proposals. The Applicant therefore concluded that retaining the GCC route in the Order limits was appropriate and did not provide alternatives to CA. Detailed design of the final cable routing within the corridor may address the concerns of the Objectors or voluntary agreement may still be reached. Overall, I am satisfied that this demonstrates that there are no viable alternatives that would avoid CA in this respect.

6.5.32. The Applicant has confirmed that it has secured voluntary agreements for the land for the PV panels comprised in Work No.1. Options agreements are in place for this land. This covers the majority of the land in the Solar and Energy Storage Park.

6.5.33. Table 1 in the Final CA Schedule [REP6-029] sets out the position in respect of the plots identified in the BoR. This identifies that within the Solar and Energy Storage Park the majority of land has been secured through agreement by the Applicant. There remain a number of plots on individual AP's and SU's land that are still subject to negotiations and

these are detailed in table 1 to the CA Schedule. To detail and separate out information in a more digestible format a separate schedule of objections to Compulsory Acquisition was requested and provided, updated throughout the Examination, the final version [REP6-036] records where objections remain outstanding. Similarly, a separate Schedule of Statutory Undertakers was requested and provided and the final version [REP6-038] records the position for each of the SUs at the end of the Examination. This provides the evidence to demonstrate the current position on CA negotiations and where there are objections thereto. I deal with the individual objections and matters related to SUs below.

6.5.34. In light of the evidence above, I consider the Applicant has satisfactorily demonstrated that all reasonable alternatives to CA, including in terms of the layout of the Proposed Development, site selection, cable routing considerations, negotiation for voluntary agreements etc have been explored.

Availability and Adequacy of Funds

6.5.35. The Applicant's Funding Statement [CR1-028] explains that the Applicant is funded by Low Carbon Limited. The sole shareholder of the Applicant is Low Carbon UK Solar Investco 2 Limited, which is an indirect subsidiary of Low Carbon Limited. Low Carbon Limited is 51% owned by Low Carbon Group Limited and 49% by MassMutual Holding LCC a wholly owned subsidiary of Massachusetts Mutual Life Insurance Company.

6.5.36. The Funding Statement which includes the latest consolidated accounts for Low Carbon Limited indicate that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation.

6.5.37. The adequacy of funding for CA nor the ability of the Applicant to secure funding were raised by any AP during the course of the Examination. However, as part of ExQ1, I asked the Applicant to provide further details on the robustness of the total amount of compensation it considered would be payable in respect of CA, which it had estimated at £25m. In response, the Applicant advised that it had instructed Gateley Hamer who are specialists in assessing, negotiating, and settling compulsory purchase claims, to undertake a Property Cost Estimate (PCE). This assesses the amount of compensation that would be payable under the collection of legislation and case law commonly known as the Compensation Code if all land and rights were to be acquired by compulsory acquisition. This estimate is kept under review to reflect changes in interest rates, changes in the property market and more information coming to light on the interests held. The PCE is currently estimated at £25 million. The last estimate was undertaken in January 2023.

6.5.38. Following the Change Request the Funding Statement was updated to take account of the additional land and it concluded that whilst the

additional land creates additional land value and additional potential disturbance claims, the impact, when offset against reduced costs in other areas of the PCE, means that the change in the overall Property Cost Estimate is negligible and covered by the existing funding position.

6.5.39. Furthermore, Art 47 of the preferred DCO requires a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

6.5.40. Based on the information provided, I am satisfied that the necessary funds would be available to the Applicant to cover the likely costs of CA.

6.6. INDIVIDUAL OBJECTIONS AND ISSUES ARISING DURING THE EXAMINATION

6.6.1. The Schedule of Negotiations and Powers Sought, final version [REP6-029] sets out in table 1 the status of objections with the individual owners and others with an interest in land. A Summary of Objections to Compulsory Acquisition Powers Schedule, final version [REP6-036], was submitted at D1 and updated during the Examination detailing the discussions that were ongoing with all freeholders who have an interest in the Order lands and which categorised the discussions on the current status of negotiations. A Statutory Undertakers Objection Schedule was also provided at D1 and updated during the Examination, the final version is [REP6-038].

6.6.2. These documents provide the final positions of APs at the close of the Examination. I deal with the individual APs where there remains outstanding matters or issues were raised during the Examination.

Objectors

6.6.3. During the course of the Examination four APs objected to the CA of their land or interests:

- Christopher Ash
- Emma Hill
- Nicholas Hill
- Shaun Kimberley

Christopher Ash

6.6.4. Mr Ash is identified in the BoR as having his entitlement to enjoy private easements or rights extinguished, suspended or interfered with on plots 1/1, 1/2, 1/4, 1/5, 2/4, 2/6, 2/7, 2/8, 3/1, 3/4.

6.6.5. Mr Ash was concerned about visual impacts and construction disruption and that the Applicant was seeking to CA his property [RR-036]. Mr Ash attended CAH1 [EV-005d] where the Applicant explained that the interference with rights related to his rights in relation to land close by and not to do with his property. On this understanding Mr Ash and the

Applicant agreed to discuss matters further and submit further information into the Examination. The Applicant and Mr Ash submitted a joint statement [CARL2-002] in which it is agreed that Mr Ash withdraws his objection.

6.6.6. At the close of the Examination, the objection had been formally withdrawn. Nonetheless, the rights to be acquired and/or created are necessary to permit the realisation of the Proposed Development and CA would be justified.

Emma Hill and Nicholas Hill

6.6.7. Emma Hill and Nicholas Hill are identified in the BoR as freehold owners of plot 12/9 and freehold owners of the subsoil of up to half the road of plot 12/18. They are identified as separate owners and engaged separately with the Examination, however, the objections relate to the same plot 12/9 and are in respect of the same issues. Much of their submissions were indeed similar in form and content.

6.6.8. In summary the Hills have planning permission for the erection of two barns within the plot that they advise form part of their intentions to develop the business on their land and other interests. The barns form an essential element and the Applicant's Proposed Development would either require these not to be developed or to be demolished if erected. They are further concerned with the permanent rights that would be required and which could further frustrate their business aspirations. They have provided a number of submissions into the Examination, including copies of representations read out at CAH1, and responding to questions in my ExQ2 and ExQ3 [RR-077, RR-196, REP3-095, REP3-098, REP4-073, REP4-074, REP5-068 and REP5-081].

6.6.9. The Applicant has confirmed that it is continuing negotiations and believes that it can avoid the site of the barns within the existing extent of the Order lands and existing GCC, but this would be subject to detailed design post decision. The Applicant has produced further evidence in relation to the options it considered for the GCC in [REP5-048] – Land South of Marton Grid Connection Report. The Applicant has confirmed the latest position being it has recently issued revised commercial terms for the proposed lease arrangement. Since issuing the revised offer, the Applicant has had a number of telephone calls with Mr Hill. Whilst Heads of Terms have not yet been agreed, the Applicant will continue to liaise with Mr Hill in order to resolve the remaining commercial issues.

6.6.10. Overall, the Applicant's report on the alternatives considered demonstrates that there are no options that would avoid CA of land and indeed other options would potentially result in more parties objecting to such CA requirements. The Applicant has explored other options of routing the cables within the extent of the Order lands and believes a solution to avoid the barns may be available. Furthermore, the parties are in discussion around commercial terms and the nature of any voluntary agreements that may be reached. There are no more beneficial options, in terms of environmental issues, available to the Applicant that would otherwise reduce the need for CA. I am therefore satisfied that the

rights to be acquired and/or created are necessary to permit the realisation of the Proposed Development and that the Proposed Development would result in significant public benefits and that these outweigh any private interests such that the compelling case in the public interest is made.

Shaun Kimberley

6.6.11. Mr Kimberley is identified as having a freehold interest in plots 14/9, 14/10, 14/13, 14/14 and 14/20 in the BoR. Plots 14/9,14/14 and 14/20 relate to a subsoil interest up to half the road width or assumed ownership of an access track. Mr Kimberley is concerned that the effect the proposed construction works would have on his property and horses and the necessity to have to relocate them during the construction period. Mr Kimberley submitted a RR into the Examination [RR-243].

6.6.12. The Applicant confirmed that it was liaising with Mr Kimberley's agent to agree terms for the temporary occupation and acquisition of rights. The Applicant advised it was hopeful that terms will be agreed before the end of Examination. As the Examination progressed the Applicant advised that it believed they have now agreed terms with Mr Kimberley, the Affected Person. The Applicant is waiting for signed Heads of Terms to be returned. The Applicant hopes that once these have been signed Mr Kimberley will be able to remove his objection.

6.6.13. I sought Mr Kimberley's understanding of the position in my ExQ2. However I did not receive a response at the following Deadline, albeit the Applicant confirmed its understanding of the position in its response as set out above.

6.6.14. The Proposed Development would require the land as part of the works for the GCC, this is an intrinsic and a vital element of it. The construction works would be time limited and once the land is restored it would be returned, albeit with the Applicant retaining rights in relation to the cable. There is no evidence to suggest the land could not be put back to its present purpose and used to support and accommodate the horses. On this basis the effect is reduced. I understand negotiations are ongoing and it appears that progress has been made and Heads of Terms agreed, although I have had no formal withdrawal of the objection from Mr Kimberley.

6.6.15. I am satisfied that the land is necessary for the realisation of the Proposed Development that the Proposed Development would result in significant public benefits and that these outweigh any private interests such that the compelling case in the public interest is made.

6.7. SPECIAL CONSIDERATIONS

6.7.1. This section addresses my consideration of the Applicant's case and matters raised during the Examination with respect to:

- Crown land; and
- Statutory Undertakers.

6.7.2. The Applicant has confirmed that there is no open space, common land or fuel or field garden allotments included or affected by the Order limits affected by the Proposed Development.

Crown Land

6.7.3. The Crown Estate's interest arises in respect of the GCC crossing the tidal River Trent. The interests are set out in Part 4 of the BoR [REP6-031] and on the Crown Land Plan [CR1-015] and identify plot 13/4. Shortly before the close of the Examination, the Crown Estate [AS-026] confirmed that the Commissioners had reached a separate agreement with the Applicant which provided sufficient assurance as to the way in which the CA powers could be exercised.

6.7.4. On this basis, the Commissioners confirmed their consent to the CA of the third party interests in the plot 13/4 for the purpose of s135(1) of the PA2008. This is subject to the inclusion of Article 49 of the dDCO, as amended by their suggestion, and to the Commissioners being consulted further if any variation to the dDCO is proposed that could affect any other provisions of the Order which are subject to s135(1) and s135(2) of the Act.

6.7.5. The proposed amendments suggested by the Crown Estate are included in the preferred DCO and my rDCO.

Statutory Undertakers

6.7.6. The DCO, if made, would authorise the CA of SUs' rights on land comprising of numerous plots as identified in the BoR [REP6-031] and shown on the Land Plans [CR1-014]. The Applicant addresses SUs in section 10.3 of the SoR [CR1-020] and at the end of the Examination the Applicant's closing statement [REP7-001] which includes attached at Appendix 1 a Section 127 and Section 138 Statement. This sets out the Applicant's position with regard to the SUs where objections have not been withdrawn. At table 1 in that Appendix the Applicant identifies the position in respect of all SUs for completeness. Further information is contained in the Schedule of Negotiations and Powers Sought [REP6-029] and the Statutory Undertakers Objection Schedule [REP6-038].

6.7.7. S127(3) of the PA2008 provides that a DCO may only authorise the CA of SUs' land where a representation has been made by the SU objecting to the acquisition if the SoS is satisfied that:

- The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- If purchased, the land can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

6.7.8. Section 127(6) of the PA2008 provides that a DCO may only authorise the CA of rights over SUs' land where a representation has been made by the SU objecting to the acquisition and the SoS is satisfied that:

- the rights can be acquired without serious detriment to the carrying on of the undertaking; or
- any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

6.7.9. S138 of the PA2008 provides that a DCO may include provision for the extinguishment of a relevant right, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates. A relevant right is defined in s138(2) as meaning a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which, (a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or (b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

6.7.10. As referenced above the Applicant by the close of the Examination identified there were three SUs that had raised objections or comments on the application and whose objections had not been withdrawn and therefore triggered section 127:

- EDF Energy (Thermal Generation) Limited;
- Network Rail Infrastructure Limited; and
- Trent Valley Internal Drainage Board.

6.7.11. The Applicant has also identified Uniper UK Limited where matters have not been completely resolved. However the Applicant points out that as Uniper UK Limited did not submit a representation about the DCO application s127 of the PA2008 is not engaged. I turn to address Uniper UK Limited after dealing with the s127 SUs.

EDF Energy (Thermal Generation) Limited

6.7.12. EDF Energy (Thermal Generation) Limited (hereafter referred to as EDF) submitted at D7 a written representation [REP7-004] setting out its final position on the unresolved objection. This identified that the Applicant is seeking to acquire new rights over plots 17/5, 17/6, 17/7, 17/8, 17/12 and 17/13 of which EDF is the freehold owner and is also seeking to take temporary possession of plots 17/20, 17/21, 18/1, 18/2, 18/3 and 18/4.

6.7.13. The submissions noted that the Applicant and EDF have substantially agreed Protective Provisions for EDF's benefit. These were included on the face of the draft DCO submitted by the Applicant at deadline 5 at Schedule 15, Part 15 and remain in the final Deadline 6 version (the preferred DCO). This is welcomed by EDF.

6.7.14. The Protective Provisions, however, include at paragraph 190(1) square brackets as a place holder which EDF consider to be inappropriate for the DCO to be made with square brackets included. It would also mean that references to paragraph 190(1) (within the remaining subparagraphs of paragraph 190 and paragraph 198) would exist, where only square

brackets are included. Again, EDF considers that this is inappropriate for a statutory instrument.

6.7.15. EDF sets out the form of wording that was being discussed for inclusion but notes that the Applicant is unhappy to include it until voluntary agreements have been reached. In the absence of the suggested wording EDF proposes alternative wording that could be included to address the issues it raises.

6.7.16. Without these matters resolved EDF is of the view the CA of its land would cause serious detriment to its undertaking. Given the required use of this land, there is no alternative land that can be used. The land is required for the safe decommissioning and demolition of the former coal fired station, safe continued operation of the existing Uniper and National Grid assets, and long-term regeneration of the Cottam site.

6.7.17. The Applicant's position as set out in its Section 127 and 138 Statement is that Protective Provisions for the benefit of EDF are included in Part 15 of Schedule 15 to the preferred DCO submitted at Deadline 6. These protective provisions currently include a placeholder at paragraph 190, for any further provision relating to compulsory acquisition which may arise from voluntary negotiations. In any event, the Applicant considers that through the protection afforded by the Protective Provisions in their current form and which are otherwise agreed, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of EDF's undertaking.

6.7.18. The Applicant also advises that it understands that Heads of Terms for the voluntary land agreement are now agreed with EDF, save for final commercial matters, and the Applicant is continuing to liaise with EDF in order to reach a commercial agreement. The Applicant will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.

6.7.19. My function is to make a recommendation to the SoS including in respect of a recommended DCO that could be issued. It is inappropriate to have within a statutory instrument square brackets or place holders. The only option is therefore to include a form of wording or remove that element. The Applicant has not provided me with a form of wording with which it would be happy for this point in the Protective Provisions. It appears that all parties are working towards voluntary agreements and that good progress is made with Heads of Terms having been agreed and commercial matters remaining to be so. EDF has set out in its submissions how the CA of its land and interest would cause serious detriment to its undertaking. The Applicant is content that the Protective Provisions give the necessary protection. These, however, need to be complete and integrally coherent and operable which with the square bracket place holders they are not. On that basis I have inserted the additional wording at paragraph 190(1) as requested by EDF as this requires agreement to be reached between the parties which will be required in any case to facilitate the grid connection.

6.7.20. With the suggested alteration I am satisfied that the Protective Provisions would operate effectively and ensure that there is no serious detriment to EDF's undertaking.

Network Rail Infrastructure Limited

6.7.21. Network Rail Infrastructure Limited (NR) at D7 [REP7-007] provided a written submission detailing its final position in respect of its unresolved objections. The submission identifies the relevant plots as 3-2, 5-11, 6-3, 6-6, 6-8, 10-15 and 15-11.

6.7.22. NR advises that it requires its standard protective provisions to be included in the draft DCO, and the parties have agreed the form of Protective Provisions for the Protection of Railway Interests save for one outstanding matter. This relates to the longstanding principle that any exercise of compulsory acquisition powers pursuant to the DCO in respect of railway property must be subject to NR's prior consent and a restriction to this effect must be included in the Protective Provisions. NR's position is that an absence of such protection in the Protective Provisions will have a detrimental effect on NR's ability to carry out its statutory undertaking, comply with its Network Licence and safely operate the railway network.

6.7.23. Specifically, NR has set out a Protective Provision wording for paragraph 116 of Schedule 15, part 10, of the preferred DCO which it requires to be incorporated. The Applicant has failed to include this and has instead inserted a place holder square brackets for wording to be inserted once agreement has been reached on the final wording. NR is concerned that without the necessary wording it has suggested it would not be able to meet the requirements of its licence and there would be serious detriment to its ability to carry out its undertaking. All plots are operational railway line, the consequences of not including these are that it could interfere with the operational railway line and the safe running of trains and such detriment cannot be made good by other land as the line cannot be relocated.

6.7.24. NR advises that it is not aware of any proposed compulsory acquisition of rights and temporary possession over the Plots involving the extinguishment of any rights or the removal of any apparatus belonging to NR. In these circumstances NR confirm there is no objection from NR to the test in section 138 being satisfied.

6.7.25. The Applicant's position is set out in Appendix 1 to its final statement in the Section 127 and Section 138 Statement [REP7-001].

6.7.26. The Applicant notes that there is a placeholder at paragraph 116 of Schedule 15 of the preferred DCO for the same reasons as EDF above. The Protective Provisions at Part 10 of Schedule 15 of the preferred DCO are otherwise agreed with NR and the Applicant considers that they are sufficient to protect NR's interests in their current form. The Applicant also understands that Heads of Terms for the voluntary land agreement are now agreed with NR, save for final commercial matters. The Applicant is continuing to liaise with NR in order to reach a commercial

agreement and will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.

6.7.27. The Applicant further explains that in its view Protective Provisions for the benefit of NR are included in Part 10 of Schedule 15 to the preferred DCO submitted at Deadline 6. This currently includes a placeholder at paragraph 116, for any further provision relating to compulsory acquisition which may arise from voluntary negotiations. The parties have also agreed the terms of a framework agreement, with the intention that this agreement will be completed concurrently with the land agreement. In any event, the Applicant considers that through the protection afforded by the Protective Provisions in their current form and which are otherwise agreed, the compulsory acquisition provisions in the preferred DCO can be granted without serious detriment to the carrying on of Network Rail's undertaking.

6.7.28. Whilst NR has not raised the issue of the placeholders themselves, I take a similar approach as to EDF and consider it inappropriate to include place holders in an Order I am recommending to the SoS. On that basis I need some form of wording to insert at paragraph 116 or to remove the placeholder. NR has provided me with its wording, but I have had no detailed response from the Applicant as to why these provisions are unacceptable in whole or in part. The Applicant relies instead on the argument that the Protective Provisions in themselves provide adequate protection of NR's undertakings. I am not convinced by this argument and am concerned given the nature of the undertaking, the interest to be acquired and the nature of NR's licence that it must be confident that it can meet its required obligations under its licence. On the basis of the information before me I cannot be satisfied that that is the case.

6.7.29. I understand that there may be a Framework agreement in place or agreed and that voluntary agreement is well advanced. However, in the form that is before me I do not accept that a place holder is appropriate and I am satisfied that to ensure there is no serious detriment to NR's undertaking it is necessary to include NR's suggested wording at paragraph 116 to complete the Protective Provisions at Part 10 of Schedule 15 to the preferred DCO. With this in place I am satisfied that there would be no serious detriment to its function and therefore the test in s127 is met.

Trent Valley Internal Drainage Board (TVIDB)

6.7.30. TVIDB submitted a Relevant Representation [RR-330] in respect of the DCO. The Plots in which it holds an interest are identified as plots 6/13, 12/6, 12/9, 13/1, 13/2, 13/3, 13/5, 13/6, 13/8, 14/3, 14/4, 14/6, 14/9, 14/12, 14/15, 14/16, 14/18, 14/19, 15/2, 15/6, 15/7, 15/14, 17/3, 17/4, 17/5, 17/6, 17/7, 17/13, 17/14, 17/20, 17/21, 18/1.

6.7.31. The Applicant prepared a SoCG for TVIDB which was submitted with the initial application. This was revised but never concluded. By the close of the Examination the Applicant submitted an unsigned version of the

SoCG [REP6-020]. Most of the areas remain identified as under negotiation and the log of exchange of correspondence confirms that amongst other points that TVIDB noted that it acts as an agent on behalf of Lincolnshire County Council (LCC) and is subsequently the consenting authority for additional watercourses in the DCO Order limits. With regard to disapplication of Section 23, TVIDB indicated that it would not be prepared to do this. Matters left outstanding between the parties include Byelaw 3, Byelaw 10 and Byelaw 17 and requirements for culverting of watercourses within the Order limits.

6.7.32. The Applicant's Appendix 1 to its closing submissions [REP7-007] sets out its position in relation to TVIDB. The Applicant notes that in accordance with s150 PA2008 and the Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, the Applicant requires TVIDB's consent to disapply section 23 of the Land Drainage Act 1991, which the Applicant is seeking to do through Article 6 of the draft DCO. The Applicant has therefore included Protective Provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the preferred DCO, which operate to protect TVIDB's interests. The Applicant argues the intention to disapply section 23 of the Land Drainage Act 1991 is standard and well precedented. For example, section 23 of the Land Drainage Act 1991 is disapplied in The Longfield Solar Farm Order 2023, The A417 Missing Link Development Consent Order 2022, The A428 Black Cat to Caxton Gibbet Development Consent Order 2022, The Great Yarmouth Third River Crossing Development Consent Order 2020 and The Drax Power (Generating Stations) Order 2019.

6.7.33. The Applicant's Statement on s127 and s138 advises that the final Statement of Common Ground [REP6-020] confirms that all matters remain under discussions between the Applicant and TVIDB. The SoCG acknowledges that the DCO includes Protective Provisions at Part 3 of Schedule 15 of the preferred DCO for the protection of drainage authorities. Whilst the SoCG does not identify any concerns with these Protective Provisions, the representation has not been withdrawn and therefore s127 is triggered.

6.7.34. Part 3 of Schedule 15 of the preferred DCO provides Protective Provisions for the protection of drainage authorities. The Applicant notes, and I have no evidence to dispute the fact that TVIDB objects to these provisions or have any significant issues with them. Moreover, these are general Protective Provisions for all drainage authorities, and I have had no issues raised with me from other parties. I am satisfied the Protective Provisions as included in the preferred DCO are reasonable and necessary and provide appropriate protection. Moreover, as TVIDB has not given its consent to the disapplication of s23 of the Land Drainage Act 1991, for which it is the relevant body, it retains control under this as the DCO cannot disapply its provisions without its consent (I deal with this further in relation to the DCO below).

6.7.35. On this basis the CA of land and interest in relation to those plots in which TVIDB has an interest would not result in serious detriment to its function.

Uniper UK Limited

6.7.36. Uniper UK Limited (hereafter referred to as Uniper) has interests in plots 12/11, 12/14, 12/15, 15/10. The Applicant in its closing submissions, including Appendix 1, [REP7-001] notes that Protective Provisions for the Protection of electricity, gas, water and sewerage undertakers are included at Part 1 of Schedule 15 of the final draft DCO submitted at Deadline 6. In any event these will operate to protect Uniper's interests as a licence holder under the Electricity Act 1989, although the Applicant continues to engage with Uniper and will update the ExA and/or Secretary of State if necessary and in due course. The Applicant further advises that the Applicant considers these well-precedented and standard provisions are sufficient to protect Uniper's interests, as explained in the section 127 statement accompanying their Closing Submissions. On Saturday 16 December 2023, Uniper provided a proposed bespoke set of Protective Provisions for the Applicant to consider. Given the limited time available in advance of Deadline 6 on Thursday 21 December 2023 and Deadline 7 on 4 January 2024, the Applicant was unable to agree a bespoke set of Protective Provisions to be included in the final draft DCO. However, the Applicant will continue to liaise with Uniper on Protective Provisions and will update the Secretary of State (as necessary) after the close of the Examination.

6.7.37. As at the close of the Examination I do not have before me the bespoke set of Protective Provisions. Nor do I have any statement from Uniper to identify concerns with the set currently forming part of the preferred DCO and how these would not protect its function. As the Applicant notes these are well precedented and reasonably standard provisions. In the absence of evidence to the contrary I am satisfied that they would provide adequate protection and that Uniper's interests and function would reasonably be protected and that there is no reason to preclude these plots from the CA and TP provisions.

Other Statutory Undertakers

6.7.38. The Applicant has set out the final position on all other SUs in appendix 1 of its closing submissions [REP7-001] on the basis of the Protective Provisions included at Part 15 of the preferred DCO I am satisfied that there is no reason to withhold CA or TP of the land and interest held by these SUs.

6.7.39. In respect of all SUs section 138 of the PA 2008 is engaged by Article 23 of the draft DCO. This Article would permit the undertaker to extinguish or relocate the rights or apparatus of statutory undertakers and electronic communications apparatus. Such power may only be included in the DCO if the Secretary of State is satisfied the extinguishment or removal is necessary for the authorised development.

6.7.40. The exercise of such powers would be carried out in accordance with the Protective Provisions contained in Schedule 15 of the preferred DCO which set out constraints on their exercise with a view to safeguarding the statutory undertakers' and electronic communications apparatus owners' interests. On this basis I am satisfied that these Protective

Provisions are necessary and appropriate and safeguard the interest of those parties they are set out to protect. I therefore consider that the test set out in s138 of the PA 2008 is satisfied.

6.8. LAND TO WHICH NO OBJECTION HAS BEEN RECIEVED

6.8.1. There are a number of other Category 1 landowners in the Order lands whose land would be subject to CA, TP with Permanent Rights or TP who have not raised objections to the Proposed Development or CA and TP powers sought during the Examination. The Applicant's schedule of Negotiations and Powers Sought [REP6-029] sets out a schedule of all negotiations and the progress made during the Examination. A number are being resolved through negotiations but have not yet completed or others (the majority) relate to TP or TP with rights where discussions are ongoing to address concerns which would be resolved at the detailed design stage.

6.8.2. The Applicant's Appendix sets out the ongoing communication with these persons and they had every opportunity to engage with the Examination.

6.8.3. There are a number of other plots of land where land rights would be interfered with, and where no correspondence has been received to indicate that there is an objection to the CA, TP with Permanent Rights or TP of the relevant plots.

6.8.4. In all cases I have considered and conclude that the land is required for the development to which the development consent would relate or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The same considerations apply to that land, which is sought to be acquired for TP, whether or not with permanent rights thereafter.

6.9. CONCLUSIONS

6.9.1. My approach to the question as to whether and what CA powers I should recommend to the SoSESNZ to grant has been to

- seek to apply the relevant sections of the PA2008, notably s122 and s123, the CA Guidance, and the Human Rights Act 1998; and
- in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.9.2. The preferred DCO [REP6-024] deals with both the Proposed Development itself and CA and TP powers. I conclude above that when the adverse effects of the Proposed Development are weighed against its public benefits development consent should be confirmed. The consideration of the CA issues must be consistent with that view.

6.9.3. I am satisfied that if development consent were to be granted for the Proposed Development there would be a need to acquire the rights and

interests in the CA land. On this basis the Proposed Development would comply with s122(1) insofar as it also meets s122(2).

6.9.4. I am also satisfied that the Applicant has sought to acquire land by negotiation and has modified the Proposed Development in advance of submission and by way of changes to reduce the extent of land for which it seeks CA or TP in accordance with paragraph 8 of the CA Guidance. This can be evidenced by the Schedule of Negotiations and Powers Sought [REP6-029] which sets out the ongoing discussions and negotiations, and the changes to the Proposed Development as detailed in the consideration of alternatives above.

Funding

6.9.5. I have addressed funding above and am satisfied that sufficient funds are in place to deal with any compensation available from CA and that the rDCO provides security through Article 47 in the preferred DCO for the security of funding. The Funding Statement also identifies the Applicant's intent with regard to funding the scheme and its history in this field for developing such schemes.

6.10. HUMAN RIGHTS ACT 1988 and PUBLIC SECTOR EQUALITY DUTY CONSIDERATIONS

6.10.1. The Applicant acknowledges in the SoR [CR1-020] that the DCO has the potential to engage a number of the articles of the European Convention on Human Rights ECHR as brought into UK law by the Human Rights Act 1988 but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

6.10.2. The Applicant notes that the DCO has the potential to infringe the rights of persons who hold interest in land within the Order land under Article 1 of the First Protocol to the ECHR which protects the rights to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest. The Applicant states it has sought to minimise the amount of land over which it requires powers of compulsory acquisition. The Applicant considers that there would be very significant public benefits arising from the grant of the Order. The benefits are only realised if the Order is accompanied by the grant of powers of compulsory acquisition, and the purpose for which the land is sought (to build and operate the Proposed Development) is legitimate. The Applicant has concluded on balance that the significant public benefits outweigh the effects upon persons who own property within the Order land.

6.10.3. Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections. The provision of CAH1 [EV-005b and EV-005d] and CAH2 [EV-010] enabled any AP who wished to be heard to be heard fully, fairly and in public. The Applicant states that all owners and occupiers of land affected by the Proposed Development have been contacted and that representations could be made in response

to notice under s56 PA2008 or at any CAH advertised or held in public by the ExA.

6.10.4. Article 8 protects private and family life, home and correspondence. The Applicant confirms that the Order limits do not include and the Proposed Development does not require the outright acquisition of any houses.

6.10.5. I am satisfied that the Order strikes a fair balance between the public interest in the Proposed Development going ahead and the interference with rights that would be affected. I therefore consider that it would be appropriate and proportionate for the SoS to make the Order to include the grant of compulsory acquisition powers sought.

6.10.6. I am also satisfied that due to the characteristics of the Proposed Development and the mitigation that has been proposed by the Applicant, there would be no harm to the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and any persons who do not have a protected characteristic. I am satisfied that my Public Sector Equality Duty (PSED) has been discharged and that I have conducted the Examination with full regard to my requirement to discharge this duty. In reaching this conclusion I have had regard to the Applicant's Equality Impact Assessment [REP3-023].

6.10.7. I conclude that the CA powers sought would accord with s122(2) and (3) and 123 of the PA2008. The Crown Estate has confirmed that it is content subject to provisions being included in the DCO for the CA provisions, which have been included in respect of Crown Land for the purposes of s135 of the PA2008 interests. I am satisfied that in all cases relating to individual objections and issues that CA, TP with permanent rights and TP is justified to enable implementation of the Proposed Development and a compelling case in the public interest has been made out. The DCO meets the requirements of s127(3), 127(6) and 138 of the PA2008 in respect of SUs. There is adequate funding in place for the Proposed Development. The Proposed Development would be compatible with the Human Rights Act 1988 in terms of being a proportionate interference with property and family life. I am satisfied that the Public Sector Equality Duty (PSED) has been discharged in the conduct of the Examination and there is no breach of the duty.

6.10.8. Overall, the SoS can be satisfied that the tests in s122(2) and s122(3) PA2008 are met and I recommend acceptance of the CA and TP powers proposed in the rDCO; the conditions in s123(2) and s123(4), 127, 135 and 138 PA2008 are met; and all of the powers for CA and TP, over all of the plots shown on the Land Plans, as provided for in the Articles and Schedules of the rDCO, are justified.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. A draft Development Consent Order (dDCO) [APP-215] and Explanatory Memorandum (EM) [APP-216] were submitted by the Applicant as part of the application for development consent. The EM has been prepared to explain the purpose and effect of each article of, and schedules to, the Order as originally submitted.

7.1.2. The submission version dDCO was broadly based on the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) along with other DCOs that have been made up to the date of the application. The original dDCO [APP-215] and subsequent iterations are in the form of a Statutory Instrument as required by section (s) 117(4) of the Planning Act 2008 as amended (PA2008).

7.1.3. This Chapter starts by providing an overview of the dDCO, the changes made to the dDCO during the Examination process between the original application draft DCO and the final dDCO submitted by the Applicant at Deadline (D) 6 [REP6-024]. This final dDCO will be referred to as 'the preferred DCO' as it is the version preferred by the Applicant at the end of the Examination.

7.1.4. A final EM was submitted at Deadline 6 [REP6-027] which incorporated changes to that date. This Chapter then considers changes which should be made to the preferred DCO in order to arrive at the Examining Authority's (ExA's) recommended DCO (rDCO) in Appendix C to this Report in the event that the Secretary of State for Energy Security and Net Zero (SoSESNZ) is minded to make the DCO.

7.1.5. The sections of this Chapter describe:

- the DCO as applied for;
- changes during the Examination;
- matters in contention; and
- conclusions.

7.2. THE DCO AS APPLIED FOR

7.2.1. The first version of the dDCO [APP-215] included a number of provisions to enable the construction, operation and maintenance of the Proposed Development. As explained, it was modified during the course of the Examination. Its final general structure, which remained substantially as originally submitted and which I conclude is fit for purpose, is set out below [REP6-024]. I do not recommend any changes to the general structure:

- Part 1 (Preliminary): Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of the defined terms used in the Order;

- Part 2 (Principal Powers): Articles 3 to 5 provide development consent for the Proposed Development, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to the application and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
- Part 3 (Streets): Articles 8 to 15 provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to stop up temporarily or divert public rights of way; to use private roads; to enter into agreements with street authorities and provisions relating to traffic regulations;
- Part 4 (Supplemental Powers): Articles 16 to 19 set out four supplemental powers relating to the discharge of water; the removal of human remains; undertaking protective works to buildings; and the authority to survey and investigate land;
- Part 5 (Powers of Acquisition): Articles 20 to 33 provide for the undertaker to be able to compulsorily acquire the Order land and rights over and within it, and to be able to temporarily use parts of the Order Land for the construction or maintenance of the Proposed Development. Article 21 sets out a time limit for the exercise of the compulsory acquisition powers and Article 23 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 29 and 30 provide for the temporary use of land for constructing and maintaining the Proposed Development. Article 31 provides for powers in relation to the land and apparatus of statutory undertakers;
- Part 6 (Miscellaneous and General): Articles 34 to 49 include various general provisions in relation to the Order:-

    i. Article 34 sets out who has the benefit of the powers contained in the Order and Article 35 sets out how those powers can be transferred.
    ii. Articles 36 and 37 provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";
    iii. Articles 38 and 39 provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Development and in relation to trees subject to tree preservation orders;
    iv. Articles 40 to 49 include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 15); incorporation of a deemed marine licence (set out in Schedule 9); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; the incorporation of the mineral code; and crown rights.

7.2.2. There were originally sixteen schedules but by the conclusion of the Examination there were eighteen Schedules to the preferred DCO providing for:

- Schedule 1 – the description of the Scheme;
- Schedule 2 – the requirements that apply to the Scheme (ie the controls that apply to the Order, similar to planning conditions). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order;
- Schedule 3 – a list of the local legislation relating to railways, river navigation, fisheries and water that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order and do not impact on the operation or maintenance of the River Trent as a navigable river;
- Schedules 4 to 8 – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary traffic regulation measures during construction of the authorised development;
- Schedule 9 – the deemed marine licence;
- Schedule 10 – details of land in which only new rights may be acquired;
- Schedule 11 – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- Schedule 12 – details of land over which temporary possession may be taken;
- Schedule 13 – the documents and plans to be certified by the Secretary of State;
- Schedule 14 – arbitration rules that apply to most arbitrations in connection with the Order;
- Schedule 15 – provisions for the protection of statutory undertakers and their apparatus;
- Schedule 16 – procedure for the discharge of requirements;
- Schedule 17 – details of hedgerows to be removed; and
- Schedule 18 – details of trees subject to tree preservation orders which may be felled or lopped.

7.3. CHANGES DURING EXAMINATION

7.3.1. During the Examination the Applicant sought to make various changes to the dDCO. These changes were in relation to the formal Change Request to the Order lands and works to facilitate connection to Cottam Power Station submitted at D4, in response to questions raised in ExQ1 [PD-006], (ExQ2) [PD-009] and ExQ3 [PD-013], following discussions at Issue Specific Hearing 1 (ISH1) [EV003a and EV-003c] and Issue Specific Hearing 2 (ISH2) [EV-007a and EV-007c] and following requests or discussions with the Host Authorities or IPs.

7.3.2. There were numerous minor changes, corrections and drafting changes also made during the Examination. These are recorded in a Schedule of Changes to the draft DCO which was set out as a table of amendments and submitted by the Applicant each time it provided a revised dDCO. It

records the revision to the provision, the Deadline at which it was made and the source which resulted in the change. The final version is [REP6-039] and the changes can be easily reviewed in this document and the tracked changes versions of the dDCO submitted at each deadline.

7.3.3. As part of the Examination process, I did not publish a Schedule of Proposed Changes to the dDCO as I did not consider it to be necessary.

7.3.4. At each iteration of the dDCO the Applicant submitted a clean and tracked change version of the dDCO and the table of amendments was updated. The final version was version 8 of the dDCO at the close of the Examination. Table 1: History of Draft DCOs sets out the version number, dates of the submission and Examination event, along with the Examination Library numbers of the clean and tracked change versions of the dDCO and the document of the table of amendments to the dDCO.

Table 1: History of Draft DCOs

Rev	Date	Event	Clean version reference	Tracked change version reference	Table of amendments to the draft DCO
0	January 2023	Appln	[APP-215]		
2	July 2023	D1	[REP-018]	[REP-019]	
3	August 2023	D2	[REP2-027]	[REP2-028]	
4	September 2023	D3	[REP3-006]	[REP4-022] Submitted in following deadline	[REP3-028] First one
5	October 2023	D4	[REP4-023]	[REP4-024]	[REP4-025] Deadlines

Rev	Date	Event	Clean version reference	Tracked change version reference	Table of amendments to the draft DCO
					1,2,3,and 4.
6	October 2023	D4 With Change Request	[CR1-016]	[CR1-017]	See above
7	November 2023	D5	[REP5-017]	[REP5-018]	[REP5-039] Deadlines 1 to 5 inclusive.
8	December 2023	D6	[REP6-024]	[REP6-023]	[REP6-039] Deadlines 1 to 6 inclusive

7.3.5. I set out below those matters which resulted in substantive changes to the dDCO following discussions or issues raised during the Examination and which resolved matters raised or where not the subject of further concerns once the change was made.

7.3.6. To ensure clarity and secure the Archaeological mitigation a definition of the Archaeological Mitigation Strategy was inserted into the definitions section cross-referencing to the certified documents in Schedule 13. The AMS itself was updated during the Examination and this is considered in detail above and a final version was acceptable [REP5-027 and REP5-029]. These resolved any issues around the Archaeological impact and ensured appropriate mitigation was secured.

7.3.7. Article 38 was amended to clarify what TPO trees could be felled, lopped or cut back and to provide clarity on hedgerows to be removed by introducing an additional reference to an additional plan, the vegetation removal plan, which was inserted into a new Schedule (Schedule 17). This provided the necessary clarity to ensure TPO and hedgerow removal works were clearly identified.

7.3.8. Article 49 in respect of Crown Land was amended at the request of the Crown Estate [AS-026]. The suggested amendment was included in the preferred DCO and the Crown Estate removed its objection [AS-026] to the inclusion of its land in the Order.

7.3.9. In Schedule 2 there were a number of detailed changes to the wording of Requirements including to address the concerns of the Host Authorities to ensure that the Requirements included appropriate trigger mechanisms and ongoing maintenance clauses or continued operation of management plans throughout the life of the Proposed Development. The amendments addressed the concerns raised and ensured that the Requirements met the appropriate tests.

7.3.10. The Requirements 6 (Battery Safety Management), 7 (Landscape and Ecological Management Plan, 8 (Biodiversity Net Gain, 10 (Surface and Foul Water drainage), 11 (Archaeology), 12 (Construction environmental management plan), 13 (Operational environmental management plan), 17 (Soil management), 18 (Skills, supply chain and employment) and 19 (decommissioning) require the submission of detailed plans substantially in accordance with the Framework or Outline plans that had been finalised and agreed during the Examination. The wording of these Requirements has been considered and adjusted where necessary to ensure that the necessary management plans are secured and address the mitigation or residual effects from the Proposed Developments. I am also satisfied that a decommissioning bond, as suggested by 7000 Acres, is not required given the terms of Requirement 19 which would be legally enforceable. These meet the appropriate tests, address the issues as identified in the relevant Chapters set out above and I am satisfied are in an appropriate form.

7.3.11. Requirement 19 which addresses decommissioning was amended relatively early in the Examination to include a requirement that decommissioning must commence no later than 60 years following the date of final commissioning of the authorised development. This in effect introduced a time limit for the Proposed Development which had hitherto not been included. The 60 year time limit is consistent with the assessments undertaken in the Environmental Statement and the basis on which I have founded my conclusions. Whilst there were concerns and objections to the length of the time limit, for example 7000 Acres (see its final statement [REP7-008] commenting that 2024 NPS EN-3 identifies an upper limit of 40 years is typical) who argue that ground mounted solar panels will be obsolete long before the end date. They are also concerned the Applicant has not explained why it needs such a long period. I am satisfied that 2024 NPS EN-3 does not introduce an upper time limit and indeed says longer and shorter periods may be sought. Moreover, the Applicant's ES has assessed the effects over this period and its whole application is predicated on the basis of this life span (including replacement of panels) and seeks to demonstrate that the impacts are acceptable and the benefits outweigh any disbenefits. This is a conclusion I have also arrived at above, including having regard to the need and significant benefit derived from the low carbon energy generation. Overall, therefore I am satisfied with the time limit as

introduced to Requirement 19 and indeed see it as a necessary and important control, given that the ES has only assessed this period and any longer would require further consideration at a future date if necessary.

7.3.12. A number of changes to Schedules 4, 5, 6, 7 and 8 were introduced to identified appropriate streets, roads and footpaths that may be affected by the Proposed Development resultant from the Change Request. These were incorporated into the dDCO and are necessary.

7.3.13. Schedule 15 of the preferred DCO deals with Protective Provisions, it is subdivided into 16 Parts. I deal with a number of Parts where there remain outstanding issues below. However, for those other than those dealt with below these Parts were introduced or amended during the course of the Examination following agreement with the Party they are designed to protect. Following the agreement the Protective Provision was introduced or updated in the form agreed by the Applicant and the relevant party. On this basis I am satisfied the Protective Provisions are in a form and their content provides appropriate protection for the interests of the party concerned.

7.3.14. I note that Part 13 of Schedule 15 was introduced during the Examination and makes provision for a financial contribution for Lincolnshire Fire and Rescue to support its oversight and engagement with the Battery Safety Management. This was agreed following discussions at ISH3 and LCC's request for a mechanism to secure appropriate funding. The Parties agreed the approach and level of funding and I have no evidence before me or reason to conclude that the Protective Provisions would not fulfil and support the ongoing and necessary measures to ensure the site is safely managed and monitored.

7.3.15. I am satisfied that these changes are justified and necessary by the evidence before me and can be recommended for inclusion in the DCO if the SoSESNZ concludes that development consent should be granted.

7.3.16. Where there have been significant areas of contention or there was some discussion or debate as to the content of the Articles or Schedules I set this out below along with my commentary and recommendation. Where I have gone on to suggest further amendments and do not agree with the Applicant on specific matters these are set out in Table 2 - DCO provisions recommended to be changed, below.

7.3.17. The remainder of this Chapter therefore considers those parts of the Applicant's preferred DCO where objections remained outstanding at the close of the Examination, my recommendations in respect of them and the alterations I consider are necessary to form the recommended DCO (rDCO).

7.4. MATTERS IN CONTENTION

7.4.1. This section of the Report addresses the matters where Host Authorities or other IPs did not agree with the Applicant as to the substance of the dDCO or where there was some debate around the nature of the

provisions. This will be dealt with by topic area rather than by each Article and Schedule, but reference will be made to the appropriate Articles and Schedules affected for clarity.

7.4.2. A number of these have been considered in detail in the relevant Chapters of this Report and where this has been addressed previously I will not repeat my detailed reasoning here why I consider that the preferred DCO should be amended, since that was set out above.

7.4.3. Having concluded on each matter, Table 2 - DCO provisions recommended to be changed then sets out my proposed changes to the preferred DCO. This includes changes considered appropriate through consideration of the planning issues in Chapter 3. All are cross-referenced from where the recommendation is considered in the table.

Disapplication of Statutory Provisions

7.4.4. Under s120(5)(c) PA2008, a DCO may include any provision that appears to the SoS to be necessary or expedient for giving full effect to any other provision of the order. s150 PA2008 limits this power by preventing certain prescribed consents from being included within the DCO unless the relevant body consents. The relevant body is the body or person which would otherwise be required to grant the prescribed consent or authorisation. Regulation 5 and Part 1 of Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (the 2015 regs) detail the consents which are prescribed in England for the purpose of s150 PA2008.

7.4.5. Article 6 provides for the disapplication of certain provisions, which at the start of the Examination were more extensive than at the close. The EA raised concerns with the disapplication of certain provisions and these were removed during the course of the Examination and no longer are a source of contention. However, Article 6(1) (a) seeks to disapply section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a).

7.4.6. The Applicant in its Closing submissions [REP7-001] notes that in accordance with section 150 of the 2008 Act and the Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, the Applicant requires Trent Valley IDB's consent to disapply section 23 of the Land Drainage Act 1991, which the Applicant is seeking to do through Article 6 of the draft DCO. The Applicant has therefore included Protective Provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the preferred DCO, which operate to protect Trent Valley IDB's interests. The intention to disapply section 23 of the Land Drainage Act 1991 is standard and well precedented. The Applicant goes on to state it will continue to liaise with Trent Valley IDB in order to obtain the necessary consent to the disapplication and will update the Secretary of State (as necessary) after the close of the Examination.

7.4.7. As things stand and at the close of the Examination TVIDB has not agreed to the disapplication of s23 and it is a relevant body for the purposes of the regulations. On the basis of the information before me

therefore I cannot include a provision to disapply this provision. Consequently, I have removed it from the rDCO and amended the numbering in the remainder of the Article.

Statutory Nuisance

7.4.8. Article 7 in the preferred DCO relates to a Defence to proceedings in respect of statutory nuisance.

7.4.9. WLDC in its Summary Statement submitted at the Close of the Examination [REP7-003] maintained its concern with the inclusion of this provision. WLDC argues that the situation before the decision maker for this NSIP is very different to other projects that have benefited from the effective immunity from statutory nuisance claims. The potential cumulative impacts that may be experienced by local residents are unprecedented in that the construction and operation of several NSIP projects, located near to each other, could occur concurrently in this instance. Should harm arise, the practical remedy under the terms of DCO requirements for each project would be cumbersome and the identification of the source of the harm difficult to establish, making the ability to undertake effective enforcement difficult to navigate.

7.4.10. Furthermore, WLDC contends that the environmental assessment submitted in support of the Gate Burton project does not assess the various combinations of each project, and the likely contributions of each project to individual receptors is not known. Were such information available, the likely main contributor to noise levels experienced at properties would more readily be identified. WLDC's position is therefore that the lack of ability to enforce promptly due to multiple noise sources from multiple projects leaves residents with the real potential to be exposed to noise nuisance. The ability for residents to seek alternative remedy through the statutory nuisance process would provide them with a reasonable additional option. WLDC sees no impediment to the Applicant providing local residents with the ability to seek remedy through the statutory nuisance process provided by the Environmental Protection Act 1990.

7.4.11. The application is accompanied by a Statutory Nuisance Statement (SNS) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 [APP-184]).

7.4.12. Having reviewed the SNS, I am content that the Applicant has appropriately identified the scope of potential nuisance sources from the construction operation and decommissioning of the Proposed Development. It identified no significant effects that are likely to result in a statutory nuisance with the appropriate mitigation in place (including the fCEMP, fOEMP and dfDEMP) and concludes that no additional mitigation is necessary. This is supported by its assessment of those effects in the ES including cumulative effects.

7.4.13. Art 7 of the dDCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for in NSIPs. The

drafting is based on other made DCOs. WLDC is concerned that due to the cumulative activities, particularly for construction in the GCC, that it may be difficult to clearly identify the source due to multiple sources which will leave residents exposed to noise nuisance. However, the Applicant's assessments demonstrate that as a worst-case scenario even when taking account of cumulative effects there would not be noise impacts above acceptable levels that would not be suitably mitigated. I agree that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs. I have therefore retained it in my rDCO.

Procedure in relation to certain approvals and discharge of requirements

7.4.14. Article 46 in the preferred DCO deals with procedures in relation to certain approvals, other than for requirements which are dealt with under Schedule 16 'Procedure for the Discharge of Requirements'. A number of changes to the dDCO were made during the course of the Examination following comments from the Host Authorities. In this regard the Applicant's final 'Schedule of changes to the draft DCO – deadlines 1 – 6' [REP6-039] tracks and identifies the changes made. The comments of WLDC [REP4-059] and LCC [REP4-054] set out their position in respect of matters that were in contention. WLDC's final submissions [REP7-003] restate and maintain its concerns on these matters. Principally the concerns revolve around the deemed consent provisions, timescales for determination of approvals and fees to be applicable to applications. The Applicant's response to these matters are set out in its Deadline 5 submission – 'Applicant response to deadline 4 submissions' [REP5-046] and are set out in the final version of the EM [REP6-027].

7.4.15. In terms of timescales the Applicant's original dDCO submitted with the application proposed a 6 week determination period for discharge of Requirements. During the course of the Examination this has concluded with Article 46 and Schedule 16 being amended to provide for a ten week discharge period and aligns the timescales for all approvals. In its Deadline 4 submissions LCC had put forward a ten week period and the final position therefore accords with their suggestions in relation to time periods.

7.4.16. WLDC has concerns that the complexity and nature of the discharge of Requirements will result in unrealistic timescales for the determination of such submissions. It suggests that some of the submissions, in particular Requirement 5, would be akin to an EIA development proposal submission and should be afforded a 16 week determination period. They have identified a shorter period for other Requirements of 13 weeks. They have commented that they are opposed to the deemed approval provision and these timescales are necessary if those provisions are retained. WLDC has, however, suggested that a 13 week determination period for Requirement 5 and 10 weeks for others would be acceptable if the deemed consent provision is removed.

7.4.17. For the most part the proposed discharge or approvals under the requirements are for specific and identified detailed management plans or similar. These are to be substantially in accordance with the outline or framework documents to be approved under this consent, should it be granted. I consider that the substantive and fundamental issues and principles would therefore have been established and the provisions include a requirement to provide for a statement to confirm whether it is likely that the subject matter of the application would give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it would then it must be accompanied by information setting out what those effects are. Should this be the case then those applications that do identify materially different effects are not subject to the deemed approval but the application is taken to have been refused if no decision is reached within the appropriate time period.

7.4.18. In terms of Requirement 5 whilst this is a more substantive aspect and potentially akin to a reserved matters application, given the nature of the structures involved and the parameters that have been set through the ODP and the Works Plans much of those matters which could lead to significant effects have been considered.

7.4.19. Overall, I am satisfied that the ten week determination period is reasonable in the context of the nature of the development and the matters the subject of the Requirements. I am also satisfied that in order to ensure the timely implementation of the Proposed Development that a deemed approval procedure is appropriate and this has the safety net of any significant likely effects not assessed by the ES being taken out of this provision. I also note that the ten week period accords with LCC's request.

7.4.20. WLDC points to the fact that it may be faced with numerous submissions for this and other schemes in the area all coming forward at around the same time and this differentiates the scheme from, for example, Longfield solar farm which also had a ten week period. This may add additional administrative burden on the Council but there is also the potential for setting up systems to address the nature of the submissions and the consultation processes which may also bring advantages in engaging with consultees. The other schemes are not approved and I must consider the matters before me. On this basis I am firmly of the view ten weeks is a reasonable and appropriate period.

7.4.21. A further matter of concern to the Host Authorities was the matter of fees. The original dDCO did not include any fee provisions. This has been amended over the period of the Examination and further adjusted to clarify that a fee is required for the discharge of each Requirement rather than each application which may include multiple Requirements. This change was made to address comments from LCC. WLDC has suggested that a specific fee charge should be adopted for each of the requirements. However, the fee suggested for many of the Requirements which seek the approval of management plans substantially in accordance with the framework or outline document agreed as part of

the DCO, if consented, is significant. In my view this is not justified or reflective of the details that would be submitted and require consideration. I am satisfied that the general fee provisions provide for a reasonable framework for the fee for the Requirements and with the amendment to ensure this is applied to each Requirement is reasonable.

7.4.22. On the basis of my conclusions above I am satisfied with the terms of Article 46 and Schedule 16 as currently drafted in the preferred DCO and do not propose to make any adjustments to the preferred DCO. The rDCO retains the provisions on these matters as submitted in the preferred DCO.

Deemed Marine Licence

7.4.23. Article 44 of the preferred DCO provides for a Marine Licence to be deemed to have been issued. A deemed Marine License (DML) is set out at Schedule 9 of the preferred DCO.

7.4.24. The Marine Management Organization (MMO) has engaged during the Examination and made a number of submissions into the Examination including [AS-022, REP-058, REP2-063, REP3-046, REP4-064, REP5-060, REP6-051 and REP7-005]. These have been in response to questions I have raised in my various ExQ, ISH and a Rule 17 letter on HDD [PD-014] to the Applicant and the MMO, and responding to the Applicant's responses to its requests for further information.

7.4.25. The Applicant has sought to engage with the MMO to address the issues it has raised and the Applicant's position at the close of the Examination is set out in [REP7-001]. The preferred DCO includes the Article (44) to issue a DML and at Schedule 9 provides for the DML.

7.4.26. In essence the issue revolves around the necessity for a Marine Licence and the specificity of the details included in the licence and particularly around the definition or description of the licensable activities that would be undertaken.

7.4.27. Both parties in various submissions accept that the proposed underground cable activity could benefit from Article 35 of the 2011 Exempt Activities Order:

'35.—(1) Article 4 applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

(2) Paragraph (1) is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.

(4) Condition 2 is that the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) But article 4 does not apply to any such deposit carried on for the purpose of disposal'

7.4.28. The MMO argues that in such circumstances a Marine License is not required and therefore it is not necessary and therefore neither are any of the conditions in the licence.

7.4.29. The Applicant has adopted a precautionary view and argues that a DCO is a one stop shop and that the exemption could be removed. Therefore the Applicant argues that it is prudent to put in place a draft Licence that it can then rely on in the event the exemption were to be withdrawn, and thus not slowing up the implementation of the Proposed Development.

7.4.30. The MMO's position is that is not sufficient justification and there is no necessity for the licence in the face of the exemption.

7.4.31. I have not been provided with any evidence to suggest that consideration of the removal of such an exemption is being discussed or is a realistic outcome in the short term. Furthermore, in my Rule 17 letter I asked that Applicant whether having to apply for a marine licence if it did not have a DML would put the Proposed Development at risk through potential delay and cost. The Applicant responded [REP5-049] pointing out the issues it could create but stated that notwithstanding the above and whilst such a delay could negatively affect the project programme, it would not result in a delay or cost to such an extent it would affect the viability of the Proposed Development.

7.4.32. I rely to a significant extent on the advice of the MMO as the Statutory party responsible for the implementation, issue and control of such marine licence activities. The parties appear to agree the cable works for the cable under the River Trent would be within the terms of the exemption. The Applicant has confirmed that such works would not have a significant environmental effect on the marine environment. Added to this there is no indication that legislative changes are pending which would remove the exemption and one might expect if such provisions were amended that certain transitional arrangements would also be provided. The Applicant has confirmed the requirement to apply for a Marine licence if one became necessary would not put the viability of the Proposed Development at risk and the MMO have suggested a path to continue dialogue. The potential for the removal of the exemption is not sufficient justification as a back stop position to include the DML in the DCO and this can be addressed outside the DCO process should a licence become necessary. On this basis I recommend that Article 44 and Schedule 9 are deleted from the preferred DCO.

7.4.33. On the basis of removing the DML there is no reason to then consider the nature of the changes to the licence conditions. Furthermore, I am not convinced that the licensable activity is sufficiently clearly defined. In such terms the DML is not fit for purpose and needs to be amended to address these points along with the additional conditions that may then become necessary to control those activities. The MMO has not provided wording but confirms the Applicant needs to set out clearly the activities as defined in s66 of the Marine and Costal Access Act 2009 Act.

Furthermore, the MMO is concerned that the Applicant is also seeking a deemed marine licence to address a hypothetical situation whereby it is unable to carry out the works as anticipated and it would become necessary to undertake different works to achieve the same end, but that those works may not fall within an exemption under the 2011 Order. Such matters are not defined and could not form part of the licence. This adds further justification to my reasoning for removing these provisions from the preferred DCO.

7.4.34. In conclusion, I recommend that Article 44 and Schedule 9 are deleted and I have done so in my rDCO.

Protective Provisions

7.4.35. Schedule 15 of the preferred DCO has 16 Parts providing Protective Provisions in respect of a number of parties. The majority of these are agreed in form and content, are not contentious and are retained as per the preferred DCO as discussed above. There are, however, two Parts which are subject to dispute and those relate to Part 10 in respect of National Rail (NR) and Part 15 in respect of EDF Energy (Thermal Generation) Limited. I deal with each of these in turn.

Schedule 15 Part 10 - FOR THE PROTECTION OF RAILWAY INTERESTS

7.4.36. The Applicant confirms [REP7-001] that for the most part these Protective Provisions have been agreed and that they are sufficient to protect Network Rail's interests in their current form save for one matter at Paragraph 116. The Applicant has therefore included a place holder at this paragraph which is signified by empty square brackets. This is to address issues once final voluntary commercial agreements have been concluded. The Applicant further comments that it understands that Heads of Terms for the voluntary land agreement are now agreed with Network Rail, save for final commercial matters. The Applicant is continuing to liaise with Network Rail in order to reach a commercial agreement and has stated it will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.

7.4.37. Network Rail Infrastructure Limited has provided final comments at the close of the Examination [REP7-007] in which it sets out the reasoning why it is inappropriate to have the placeholder in a Statutory Instrument and that it needs the wording it has suggested to the Applicant inserted at Paragraph 116 to ensure the safe operation of the railway network and ensure its ability to meet its licence obligations.

7.4.38. The wording Network Rail provides is:

116 (1) The undertaker must not exercise the powers conferred by—

a) article 3 (Development consent etc. granted by this Order);

b) article 5 (Power to maintain the authorised development);

c) article 16 (Discharge of water);

d) article 19 (Authority to survey and investigate the land);

e) article 20 (Compulsory acquisition of land);

f) article 22 (Compulsory acquisition of rights);

g) article 23 (Private rights);

h) article 24 (Acquisition of subsoil only);

i) article 25 (Power to override easements and other rights);

j) article 29 (Temporary use of land for carrying out the authorised development);

k) article 30 (Temporary use of land for maintaining the authorised development);

l) article 31 (Statutory undertakers);

m) article 35 (Consent to transfer the benefit of the Order);

n) article 38 (Felling or lopping of trees and removal of hedgerows);

o) article 39 (Trees subject to tree preservation orders);

p) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

s) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 31 (Statutory undertakers), article 25 (power to override easements and other rights) or article 23 (Private rights) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

7.4.39. I have considered these matters above in respect of CA of SUs' land and interest and concluded that its inclusion is necessary to ensure that NR have adequate control and to ensure there is no serious detriment to their statutory undertaking. On that basis and for the reasons given above, I have inserted the suggested paragraph 116 in its entirety into Part 10 of Schedule 15 in the rDCO in place of the place holder in the preferred DCO. I note that in 116 (1) h) and i) they incorrectly refer to articles 23 and 24, these should be articles 24 and 25 so I shall amend these in the rDCO. This will ensure that there is a complete and full SI before the SoS should they wish to grant consent in the form recommended.

Schedule 15 Part 15 - FOR THE PROTECTION OF EDF ENERGY (THERMAL GENERATION) LIMITED (EDF)

7.4.40. EDF in its summary statement of matters that have not been resolved to its satisfaction [REP7-004] notes that the Applicant and EDF have substantially agreed protective provisions for EDF's benefit. These were included on the face of the draft DCO submitted by the Promoter at Deadline 5 at Schedule 15, Part 15 and remain in the final Deadline 6 version. This is welcomed by EDF. However, the version included on the face of the draft DCO at deadlines 5 and 6 contains at paragraph 190(1) of Schedule 15, Part 15, the following marker "*[xxx]*".

7.4.41. EDF has supplied a form of wording to be included at the relevant paragraph but advises that the Applicant is unwilling to insert the wording until voluntary agreements are in place, EDF suggests the Heads of Terms are agreed and the documentation is in an advanced position. EDF is of the view that in its current form without the wording specified and in the absence of the voluntary agreements being secured it would cause serious detriment to its undertaking.

7.4.42. The suggested wording is as follows:

"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 or entry to any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right of apparatus of EDF otherwise than by agreement"

7.4.43. EDF's submission is that, in the absence of the inclusion of the wording at Schedule 15, Part 15, paragraph 190(1) of the DCO, the Secretary of State is unable to satisfy itself that the tests set out at section 127(6) PA2008 are met and on that basis should not authorise the compulsory acquisition of rights over EDF's land. EDF's submission is that the Secretary of State should make the DCO with the wording noted above included at Schedule 15, Part 15, paragraph 190(1) in order to avoid serious detriment to EDF's undertaking.

7.4.44. The Applicant in its final statement [REP7-001] advises that there is a placeholder at paragraph 190 of Part 15 of Schedule 15 for any further provision relating to compulsory acquisition which may arise from voluntary negotiations and the Protective Provisions at Part 15 of Schedule 15 are otherwise agreed with EDF. The Applicant considers that the Protective Provisions in their current form are sufficient to protect EDF's interests, as explained in the section 127 statement accompanying their Closing Submissions. The Applicant also understands that Heads of Terms for the voluntary land agreement are now agreed with EDF, save for final commercial matters, and the Applicant is continuing to liaise with EDF in order to reach a commercial agreement. The Applicant will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.

7.4.45. As concluded above in respect of the CA issues, I am satisfied that the proposed wording is necessary to ensure no detriment to EDF's undertaking. I agree with EDF's submission that a Statutory Instrument cannot be made with placeholders. Whilst the Applicant undertakes to inform the SoS of any update after the close of the Examination at this point in time I have no further information before me and I must provide to the SoSESNZ a draft DCO in a form that I conclude is capable of confirmation. Given the present position I need to insert wording in place of the placeholder and the only wording I have before me which the SU believes protects its undertaking is that identified in its submissions. The only other alternative would be to strike out paragraph 190 (1) which has not been proposed by either party.

7.4.46. On that basis and for the reasons given above I have inserted the suggested paragraph 190(1) into Part 15 of Schedule 15 in the rDCO in place of the place holder in the preferred DCO. This will ensure that there is a complete and full SI before the SoS should they wish to Grant consent in the form recommended.

Table 2 - DCO provisions recommended to be changed

pDCO Provision	Examination Issue	Recommendations
Article 6(1)(a)	The Relevant body has not agreed to the disapplication of this	Delete 6(1)(a) and renumber remaining clauses of article.

pDCO Provision	Examination Issue	Recommendations
	provision.	
Schedule 15 Part 10 Paragraph 116	Applicant has provided a place holder in place of a provision to be agreed. NR has provided wording with which the Applicant has not agreed	Include the proposed wording for para 116 Part 10 Schedule 15 as proposed by NR in totality, correcting the appropriate article references. Amend Schedule No from 15 to 14 see below
Schedule 15 Part 15 Paragraph 190(1)	Applicant has provided a place holder in place of a provision to be agreed. EDF has provided wording with which the Applicant has not agreed	Include the proposed wording for paragraph 190(1) as proposed by EDF. Amend Schedule No from 15 to 14 see below
Article 44 and Schedule 9	The MMO objects to the inclusion of a DML in the DCO as it is either not necessary or required or there is sufficient clarity and detail in the proposed DML to issue it.	Remove the provisions relating to the DML by: Deleting Article 44 Deleting Schedule 9 Make consequential changes to following Article numbering and Schedule numbering in the rDCO and any cross-references.

7.5. CONCLUSIONS

7.5.1. I have considered all the iterations of the dDCO submitted by the Applicant as set out in Table 1: History of Draft DCOs, and have noted the changes made during the Examination made in response to the material changes and responses to representations made.

7.5.2. In light of the evidence submitted and heard I have recommended a number of additional changes to the Applicant's final version preferred DCO submitted at D6 [REP6-024] which are set out in Table 2 - DCO

provisions recommended to be changed above. These are incorporated into the rDCO which is set out in Appendix C of this Report.

7.5.3. I am satisfied that the rDCO (Appendix C) adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the Environmental Statement.

7.5.4. I consider that the rDCO (Appendix C) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis I am of the view that the NPS and NPPF advice is satisfied.

7.5.5. If the SoSESNZ is minded to make the DCO, I recommend that it is made in the form set out in Appendix C subject to the SoSESNZ being satisfied with the conclusions on the Case for Development Consent in Chapter 5.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This Chapter summarises my conclusions arising from the Report as a whole and sets out my recommendation to the Secretary of State for Energy Security and Net Zero (SoSESNZ).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. I have identified relevant and important development plan policies which have been taken into account during my consideration of each of the principal issues. I have also had particular regard to matters arising in the Local Impact Reports from Lincolnshire County Council, Nottinghamshire County Council, Bassetlaw District Council and West Lindsey District Council given the importance afforded to LIRs under s105 of the PA2008.

8.2.2. There is no National Policy Statement (NPS) that has effect in place for the Proposed Development that accords with section (s)104 of the Planning Act 2008 (PA2008). The Application therefore falls to be determined under s105 of PA2008. Section 105, subsection 2(c) requires the SoS to have regard to *"any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision".*

8.2.3. The Application was submitted before the designation of the 2024 suite of energy NPSs and therefore formulated on the basis of the 2011 NPS and was the basis on which my Examination was conducted. The transitional arrangements in the 2024 NPS EN-1 state the Secretary of State has decided that for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPSs. It further advises that the 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, 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.

8.2.4. I therefore conclude that that 2011 NPS EN-1 (Overarching National Policy Statement for Energy) and 2011 NPS EN-5 (National Policy Statement for Electricity Networks Infrastructure) are both important and relevant as are the 2024 NPS EN-1 (Overarching National Policy Statement for Energy), 2024 NPS EN-3 (National Policy Statement for Renewable Energy) and 2024 NPS EN-5 (National Policy Statement for Electricity Networks Infrastructure). In many instances much of the advice from the 2011 NPSs is reconfirmed in the 2024 but where there are new updated or amended policy considerations, I have given greater weight to the 2024 NPSs as they are the latest statement of Government policy.

8.2.5. The NPPF also has relevance in setting out the Government's approach to achieving sustainable development.

8.2.6. I have also had regard to the Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) and the biodiversity duty in my conclusions and in reaching my recommendation.

8.2.7. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving designated heritage assets or their settings or any features of special architectural or historic interest which they possess and had regard to the desirability of preserving any scheduled monument or its setting.

8.2.8. I have found that the Proposed Development would contribute to and is consistent with, and supportive of, Government policy. Policy identifies a need for low-carbon and renewable energy NSIPs in order to address climate change, to meet the legal commitment to Net Zero, and to ensure a secure, diverse and affordable energy supply. As such, I attribute great weight to the benefits of the Proposed Development including the co-located battery energy storage system which is associated development. I have attributed moderate positive weight to the benefit associated with BNG and a little positive weight to the limited employment and local economic benefits that would arise from the Proposed Development.

8.2.9. I acknowledge that the Proposed Development would have adverse landscape, visual, heritage and health impacts and would result in the loss of BMV, individually these each weigh moderately against the making of the Order.

8.2.10. I consider that, with appropriate mitigation secured through the rDCO, the effects on air quality, ecology, major accidents, noise and vibration, other socio-economic effects, traffic and transportation, the water environment and waste and recycling do not affect the overall planning balance.

8.2.11. I have had regard to the cumulative effects and effect interactions associated with the Proposed Development and in-combination with other developments in the locality including other potential solar NSIP schemes. The Proposed Development is the first of a series of solar schemes in this locality which will be coming before the SoS in reasonably quick succession: Cottam's Examination has recently closed, West Burton is in its Examination period and Tillbridge has not yet been submitted but is identified as being likely to be so in the near future. Each of these schemes and their effects have been identified and considered in the context of cumulative effects in the ES for the Proposed Development and supporting documents and formed part of my Examination. My conclusions have considered the potential cumulative effects and the recommendation has had regard to the potential effects. These are, however, potential schemes which have not yet obtained consent and the SoS will need to have regard to the position of the

schemes at the point of decision on this scheme and whether that affects the weight that would need to be ascribed to them.

8.2.12. Overall, I conclude that the significant benefits to be gained from the Proposed Development strongly outweigh those matters which weigh against the Order being made.

8.2.13. Having considered all other matters and representations received, I am satisfied that there are no important and relevant matters that would individually or collectively outweigh the benefits I have identified and lead to a different recommendation from that below.

8.2.14. With the mitigation proposed through the rDCO, there are no adverse impacts alone or cumulatively, or in-combination with other projects and plans, arising from the Proposed Development that would outweigh its benefits.

8.2.15. Adding further weight to this conclusion is the recent policy on Critical National Priority. Whilst 2024 NPS EN-1 does not have effect, as noted above, it is an important and relevant matter. The Proposed Development would otherwise benefit from the CNP policy as expressed in 2024 NPS EN-1 as it is not development where there are residual impacts relating to HRA sites and the mitigation hierarchy has been applied. The CNP policy would therefore advise the residual impacts (which are non-HRA residual impacts) and which are not exceptional, would not outweigh the urgent need for this type of infrastructure.

8.2.16. The SoSESNZ is the competent authority under the Habitats Regulations and will make the definitive assessment. However, I find and recommend that no impact pathways exist to European sites either alone or in-combination with other plans or projects and that there is sufficient information before the SoSESNZ to conclude that no Likely Significant Effects assessment is required.

8.2.17. I have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights required in order to implement and maintain the Proposed Development. At the close of the Examination there were two outstanding objections from individuals and three unresolved objections from Statutory Undertakers. I have addressed these and in particular amended the Protective Provisions to ensure no serious detriment to the SUs' undertaking. The CA and TP powers requested are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest, the Applicant has a clear idea of how it intends to use the land, and I consider that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers.

8.2.18. I have had regard to the provisions of the Human Rights Act 1998, and, in some cases, there would be interference with the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol. Nonetheless, with the weight of national policy in favour of the Proposed Development, the wider public interest qualifies any interference with the

human rights of the owners and occupiers affected by CA and TP of lands. The interference in their human rights would be proportionate and justified in the public interest.

8.2.19. I have also had regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010. I find, with the mitigation measures to be secured through the rDCO, the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.

8.3. RECOMMENDATION

8.3.1. For all of the above reasons, and having had regard to the LIRs produced by NCC, LCC, BDC and WLDC as well as my findings and conclusions on important and relevant matters set out in this Report, I conclude that the case for the development has been made and that development consent should be granted and that SoSESNZ should make the Order in the form attached at Appendix C to this Report.

APPENDICES

APPENDIX A: THE EXAMINATION

Table A1 – Description of Proposed Development by Work Number

Work No	Detailed List
	Nationally Significant Infrastructure Project
Work No. 1	▪ a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including— (a) solar panels fitted to mounting structures; and (b) balance of solar system (BoSS) plant.
	Associated Development
Work No. 2	▪ a battery energy storage system compound including– (i) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles. (ii) transformers and associated bunding. (iii) inverters, switch gear, power conversion systems (PCS) and ancillary equipment. (iv) containers or enclosures housing all or any of Work Nos. 2(ii) and (iii) and ancillary equipment. (v) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(i) or (iv) or located separately in its own container or enclosure. (vi) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(i), (iv) and (v), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures. (vii) electrical cables including electrical cables connecting to Work No. 3. (viii) fire safety infrastructure including water storage tanks and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles; and (ix) containers or similar structures to house spare parts and materials required for the day-to-day operation of the BESS facility.
Work No. 3	▪ development of an onsite substation and associated works including— (i) substation, switch room buildings and ancillary

	equipment including reactive power units. (ii) monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms; and (iii) 400 kilovolt harmonic filter compound.
Work No. 4	▪ works to lay high voltage electrical cables, access and construction compounds for the electrical cables including– (a) Work No. 4A– (i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 3 and/or Work No.5 to Work No. 4B including tunnelling, boring and drilling works for trenchless crossings. (ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and (iii) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment. (b) Work No. 4B – (i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C including tunnelling, boring and drilling works for trenchless crossings. (ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and (iii) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment. (c) Work No. 4C – electrical engineering works within or around the National Grid Cottam substation including- (i) the laying and terminating of one 400 kilovolt cable circuit. (ii) the installation of one 400 kilovolt generation bay; and (iii) ancillary equipment;
Work No. 5	▪ works including— (a) electrical cables, including but not limited to electrical cables connecting Works 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS; (b) fencing, gates, boundary treatment and other means of enclosure. (c) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing. (d) landscaping and biodiversity mitigation and enhancement measures including planting.

	(e) improvement, maintenance and use of existing private tracks. (f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards. (g) laying down of temporary footpath diversions, permissive paths, signage and information boards. (h) earthworks. (i) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems. (j) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment. (k) works to divert and underground existing electrical overhead lines.
Work No. 6	▪ construction and decommissioning compounds including— (a) areas of hardstanding; (b) car parking. (c) site and welfare offices, canteens and workshops. (d) area to store materials and equipment. (e) storage and waste skips. (f) area for download and turning. (g) security infrastructure, including cameras, perimeter fencing and lighting. (h) site drainage and waste management infrastructure (including sewerage); and (i) electricity, water, wastewater and telecommunications connections
Work No. 7	▪ office, warehouse and plant storage building comprising— (a) offices and welfare facilities. (b) storage facilities. (c) waste storage within a fenced compound. (d) parking areas; and (e) a warehouse building for the storage of spare parts, operational plant and vehicles.
Work No. 8	▪ works to facilitate access to Work Nos. 1 to 9 including– (a) creation of accesses from the public highway. (b) creation of visibility splays; and (c) works to widen and surface the public highway and private means of access.
Work No. 9	▪ areas of habitat management including– (a) landscape and biodiversity enhancement measures. (b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and (c) fencing, gates, boundary treatment and other means of enclosure.

Further Associated Development	In connection with and in addition to Work Nos. 1 to 9 further associated development within the Order limits including— (a) works for the provision of fencing and security measures such as CCTV and lighting. (b) laying down of internal access tracks. (c) ramps, means of access, non-motorised links, footpaths, footways. (d) boundary treatments, including means of enclosure. (e) bunds, embankments, trenching and swales. (f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure. (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development. (h) works to the existing irrigation system and works to alter the position and extent of such irrigation system. (i) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks. (j) 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. (k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses. (l) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land. (m) works required for the strengthening, improvement, maintenance, or reconstruction of any street. (n) tunnelling, boring and drilling works. (o) works for the benefit of protection of land affected by the authorised development. (p) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and (q) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development, and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Table A2 – The Environmental Statement

ES Chapter/Figs/Appendix	EL Reference
ES Non-Technical Summary	APP-183
Chapter 1 Introduction	APP-010
Figures	APP-027, APP-028
Appendices	APP-109, APP-110, APP-111, APP-112
Chapter 2 The Scheme	APP-011
Figures	APP-029, APP-030, APP-031, APP-032, APP-034, REP2-012
Appendices	APP-113, APP-114, REP2-018, REP2-019
Chapter 3 Alternatives and Design Evolution	APP-012
Figures	APP-035, APP-036, APP-037, APP-038, APP-039, APP-040, APP-041, APP-042
Appendices	APP-115
Chapter 4 Consultation	APP-013
Chapter 5 Environmental Impact Assessment Methodology	APP-014, REP4-006, REP4-007
Figures	APP-043
Chapter 6 Climate Change	APP-015
Appendices	APP-116
Chapter 7 Cultural Heritage	APP-016
Figures	APP-044, APP-045, APP-046, APP-047
Appendices	APP-117, APP-118, APP-119, APP-120, APP-121, APP-122, APP-123, APP-124
Chapter 8 Ecology & Nature Conservation	APP-017, REP4-008, REP4-009

ES Chapter/Figs/Appendix	EL Reference
Figures	APP-048, APP-049, APP-050
Appendices	APP-125, APP-126, APP-127, APP-128, APP-129, APP-130, APP-131, APP-132, APP-133, APP-134, APP-135, APP-136
Chapter 9 Water Environment	APP-018
Figures	APP-051, APP-052, AS-003, REP2-013, APP-053, APP-054, APP-055, APP-056, APP-057, APP-058, APP-059
Appendices	APP-137, APP-138, APP-139, APP-140, APP-141, APP-142, APP-143
Chapter 10 Landscape and Visual Amenity	APP-019, REP2-010, REP2-011
Figures	APP-060, APP-061, APP-062, APP-063, APP-064, APP-065, APP-066, REP2-014, APP-067, APP-068, APP-069, APP-070, APP-071, APP-072, APP-073, APP-074, REP2-015, APP-075, REP2-016, APP-076, APP-077, APP-078, APP-079, APP-080, APP-081, APP-082, APP-083, APP-084, APP-085, APP-086, APP-087, APP-088, APP-089, APP-090, APP-091, APP-092, APP-093, REP-008, REP2-017, CR1-003, APP-094, APP-095
Appendices	APP-144, APP-145, APP-146, APP-147, APP-148, APP-149, APP-150, APP-151, APP-152, APP-153, APP-154
Chapter 11 Noise and Vibration	APP-020
Figures	APP-096, APP-097, APP-098
Appendices	APP-155, APP-156, APP-157, APP-158, APP-159
Chapter 12 Socio-Economics and Land Use	APP-021, REP4-010, REP4-011
Figures	APP-099
Appendices	APP-160, APP-161, APP-162

ES Chapter/Figs/Appendix	EL Reference
Chapter 13 Transport and Access	APP-022, REP4-012, REP4-013
Figures	APP-100, APP-101, APP-102, APP-103, APP-104, CR1-004, APP-105, APP-106, CR1-005
Appendix	APP-163, APP-164, APP-165, APP-166, APP-167, REP2-020, REP2-021, CR1-006, CR1-007a, APP-168, REP6-011, REP6-011a,
Chapter 14 Human Health and Wellbeing	APP-023
Appendices	APP-169
Chapter 15 Other Environmental Topics	APP-024
Figures	APP-107
Appendices	APP-170, APP-171, APP-172, APP-173, APP-174, APP-175, APP-176, APP-177, APP-178, APP-179, APP-180
Chapter 16 Cumulative Effects and Interactions	APP-025
Figures	APP-108
Appendix	APP-181, APP-182
Chapter 17 Summary of Environmental Effects	APP-026

Table A3 – Change Request Documents

Document	EL Reference
Deadline 4 submission Cover Letter which includes Change request	REP4-001
Outline Design Principles (Clean)	CR1-001
Outline Design Principles (Tracked)	CR1-002
Figure 10-21 -Vegetation Removal Plan - Sheet 1 of 14 (Version	CR1-003

Document	EL Reference
4)	
Figure 13-5 - Public Rights of Way - Walking and Cycling Network	CR1-004
Figure 13-7 Public Rights of Way Management (Construction Phase)	CR1-005
Environmental Statement - Appendix 13-E - Framework Construction Traffic Management Plan - Part 1 (Clean)	CR1-006
Environmental Statement - Appendix 13-E - Framework Construction Traffic Management Plan - Part 1 (Tracked)	CR1-007
Environmental Statement - Appendix 13-E - Framework Construction Traffic Management Plan - Part 2 (Clean)	CR1-007a
Environmental Statement - Appendix 13-E - Framework Document Index Construction Traffic Management Plan - Part 2 (Tracked)	CR1-007b
Tree Preservation Order and Important Hedgerow Plan	CR1-008
Works Plan (Rev 4)	CR1-009
Streets, Rights of Way and Access Plans (Version 1-2)	CR1-010
Streets, Rights of Way and Access Plans (Version 2-2)	CR1-011
Traffic Regulation Measures (Version 1)	CR1-012
Traffic Regulation Measures (Version 13)	CR1-013
Land Plans (Rev 3)	CR1-014
Crown Land Plans (Rev 2)	CR1-015
Draft Development Consent Order (Clean)	CR1-016
Draft Development Consent Order (Tracked)	CR1-017
Explanatory Memorandum (Clean)	CR1-018
Explanatory Memorandum (Tracked)	CR1-019
Statement of Reasons (Clean)	CR1-020
Statement of Reasons (Tracked)	CR1-021
Updated Schedule of Negotiations and Powers Sought (Clean)	CR1-022
Updated Schedule of Negotiations and Powers Sought	CR1-023

Document	EL Reference
(Tracked)	
Book of Reference (October) (Tracked)	CR1-024
Book of Reference (Clean) (Rev 4.0)	CR1-025
Book of Reference (Tracked) (Rev 4.0)	CR1-026
Book of Reference -Schedule of Changes (October)	CR1-027
Funding Statement (Clean)	CR1-028
Funding Statement (Tracked)	CR1-029
Archaeological Mitigation Strategy - Solar Park - Part 1 (Clean)	CR1-030
Archaeological Document Index Park Ltd Mitigation Strategy - Solar Park - Part 1 (Tracked)	CR1-031
Archaeological Mitigation Strategy - Grid Connection Corridor - Part 2 (Clean)	CR1-032
Archaeological Mitigation Strategy - Grid Connection Corridor - Part 2 (Tracked)	CR1-033
Outline Public Rights of Way Management Plan (Clean)	CR1-034
Outline Public Rights of Way Management Plan (Tracked)	CR1-035
Outline Landscape and Ecology Management Plan - Part 1 (Clean)	CR1-036
Outline Landscape and Ecology Management Plan - Part 1 (Tracked)	CR1-037
Outline Landscape and Ecology Management Plan - Part 2 (Clean)	CR1-038
Outline Landscape and Ecology Management Plan - Part 2 (Tracked)	CR1-039
Outline Soil Management Plan (Clean)	CR1-040
Outline Soil Management Plan (Tracked)	CR1-041
Change Request and Consultation Report	CR1-042
Supporting Environmental Information Report	CR1-043

Table A4 – Summary of Changes

Work No	Change Requested
Applicant's change request dated 3 October 2023	
Change 1 Extension of Order limits to the South of Torksey Ferry Road	▪ An extension to the Order limits immediately to the south of Torksey Ferry Road, for works to construct and operate the underground 400kV cable and associated development. ▪ The additional land is required for: o the radii (or turning circle) required for the cables to turn first to head east in parallel to Torksey Ferry Road and then to turn north to enter the Cottam Substation. o the separation distances required between the cables; and o the need to minimise interactions with existing site constraints such as overhead lines, ditches and a bund.
Change 2 Extension to the east and west along Torksey Ferry Road and land to the north of Torksey Ferry Road	▪ An extension to the Order limits to the east and west along Torksey Ferry Road to accommodate access during construction and (for some parts of the road) during operation. This also includes land to the north of Torksey Ferry Road (into EDF land) to accommodate access during construction. ▪ This access is required to facilitate construction and/or operational traffic to access the southern extension of the land for the 400kV cable to the south of Torksey Ferry Road (Change 1) and the Cottam Substation. During construction, vehicles would join Torksey Ferry Road from an access point located within the Grid Connection Corridor from Cottam Road South to avoid construction vehicles travelling through Rampton. ▪ This change also includes an extension to the Order limits immediately to the north of the eastern extension along Torksey Ferry Road (into EDF land) to provide necessary flexibility to accommodate EDF and Uniper's preferences for obtaining access to the Cottam Substation during construction. This land is required due to the gradient, ditch and existing development between Torksey Ferry Road and the Cottam Substation, meaning it is not possible to access the Cottam Substation directly from the south.
Chane 3 Reduction in land	▪ A reduction to the Order limits and Order land to the north of where Willingham Road meets Marton Road at plot 8/1 (as identified on the Land Plans and in the Book of Reference) at the request of the landowner. ▪ The removal of a parcel of land (approximately 0.18ha) to the north of where Willingham Road meets Marton Road. The landowner of this parcel

Work No	Change Requested
	of land has requested that it is removed because he would prefer to retain this land. The Applicant agreed to remove the area because it is not essential to the delivery of the Scheme.
Change 4 Reduction in land	▪ A reduction to the Order limits and Order land due to the removal of the Marton Road operational access from the Scheme at plot 8/7 (as identified on the Land Plans and in the Book of Reference) following consultation with Lincolnshire County Council ▪ the removal of the Marton Road operational access from the Scheme. Following feedback from Lincolnshire County Council during Examination, an access review was undertaken to reconsider the access designs, locations and visibility splays to minimise the need for vegetation/hedgerow removal as detailed within Access Updates and Cumulative Impact Assessment [REP2-045]

Table A5 – Summary of Relevant Legislation for the Proposed Development

Relevant Legislation
▪ Air Quality (England) Regulations 2000 ▪ Air Quality Standards Regulations 2010, as amended ▪ 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 (as amended) ▪ Climate Change Act 2008 ▪ Climate Change Act 2008 (2050 Target Amendment) Order ▪ Carbon Budget Order 2009 ▪ Carbon Budget Order 2011 ▪ Carbon Budget Order 2016 ▪ Carbon Budget Order 2021 ▪ Climate Change Act 2008 (Credit Limit) Order 2021 ▪ Conservation of Habitats and Species Regulations 2017 (the 'Habitat Regulations 2017') as amended ▪ Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') ▪ Control of Pollution Act 1974 (as amended) ▪ The Commons Registration Act 1965 ▪ The Countryside and Rights of Way Act 2000 ▪ Eels (England and Wales) Regulations 2009 ▪ Environmental Protection Act 1990 ▪ The Environment Act 1995 ▪ Environment Act 2021 ▪ Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 ▪ Environment (Amendment etc.) (EU Exit) Regulations 2019

Relevant Legislation

- Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environmental Noise (England) Regulations 2006 (as amended)
- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016) Hedgerow Regulations 1997
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- The Health and Social Care Act 2012
- Highways Act 1980
- The Kyoto Protocol
- Land Drainage Act 1991
- Localism Act 2011
- Marine and Costal Access Act 2009
- National Parks and Access to the Countryside Act 1949 (as amended)
- The National Parks and Access to the Countryside Act 2000
- Natural Environment and Rural Communities (NERC) Act 2006
- Noise Insulation Regulations 1975
- The Paris Agreement
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992 (as amended)
- Salmon and Freshwater Fisheries Act 1975 (as amended)
- Town and Country Planning Act 1990 (as amended)
- Water Resources Act 1991
- Water Industry Act 1991
- The Water Resources (Abstraction and Impounding) Regulations 2006
- Water Framework Directive (2000/60/EC) (as amended)
- Water Resources Act 1991 (WRA 1991) (as amended)
- Water Act 2003 (as amended) Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154
- Water Framework Directive (2000/60/EC) (as amended)
- Water Act 2014
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Groundwater (Water Framework Directive) (England) Direction 2016
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Supply (Water Quality) Regulations 2018
- Waste Framework Directive (2000/60/EC (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013
- Wildlife and Countryside Act (WCA) 1981 (as amended)

Table A6 – Regional and Local Plans

Local Authority	Identified Documents and/or Relevant Policies
Central Lincolnshire (including West Lindsey District Council)	▪ Central Lincolnshire Local Plan 2023 o Policy S1: The Spatial Strategy and Settlement Hierarchy o Policy S2: Level and Distribution of Growth o Policy S5: Development in the Countryside o Policy S10: Supporting a Circular Economy o Policy S11 – Embodied Carbon o Policy S14: Renewable Energy o Policy S15: Protecting Renewable Energy Infrastructure o Policy S16: Wider Energy Infrastructure o Policy S17: Carbon Sinks o Policy S20: Resilient and Adaptable Design o Policy S21: Flood Risk and Water Resources o Policy S28: Spatial Strategy for Employment o Policy S29: Strategic Employment Sites (SES) o Policy S31: Important Established Employment Areas (IEEA) o Policy S43: Sustainable Rural Tourism o Policy S45: Strategic Infrastructure Requirements o Policy S47: Accessibility and Transport o Policy S48: Walking and Cycling Infrastructure o Policy S53: Design and Amenity o Policy S54: Health and Wellbeing o Policy S57: The Historic Environment o Policy S58: Protecting Lincoln, Gainsborough and Sleaford's Setting and Character o Policy S59: Green and Blue Infrastructure o Policy S60: Protecting Biodiversity and Geodiversity o Policy S61: Biodiversity Opportunity and Delivering Measurable Net Gains o Policy S62: Area of Outstanding Natural Beauty and Areas of Great Landscape Value o Policy S66: Trees, Woodland and Hedgerows o Policy S67: Best and Most Versatile Agricultural Land
West Lindsey District Council	▪ West Lindsey District Council Strategic Flood Risk Assessment (SFRA) Final Report – July 2019 ▪ West Lindsey Sustainability, Climate Change and Environment Strategy ▪ Lea Neighbourhood Development Plan made January 2018 o Policy 4: Design and Character o Policy 5: Wider Green Infrastructure ▪ Sturton by Stow and Stow Neighbourhood Development Plan made July 2022 o Policy 1: Sustainable Development o Policy 5: Delivering Good Design o Policy 6: Historic Environment o Policy 9: Protected views o Policy 12: Environmental Protection

Local Authority	Identified Documents and/or Relevant Policies
Bassetlaw District Council	▪ Bassetlaw District Council Core Strategy and Development Management Policies Development Plan Document (2011) o Policy DM8: The Historic Environment o Policy DM9: Green Infrastructure; Biodiversity & Geodiversity; Landscape; Open Space & Sports Facilities o Policy DM10: Renewable & Low Carbon Energy o Policy DM12: Flood Risk, Sewerage and Drainage ▪ Bassetlaw District Council Draft Local Plan 2020-2038 o Policy ST1: Bassetlaw's Spatial Strategy o Policy ST6: Cottam Priority Regeneration Areas o Policy ST39: Green and Blue Infrastructure o Policy ST40: Biodiversity and Geodiversity o Policy 41: Trees, woodlands and hedgerows o Policy ST42: The Historic Environment o Policy 43: Designated and Non-Designated heritage Assets o Policy ST50: Reducing Carbon Emissions, Climate Change and Mitigation and Adaption o Policy ST51: Renewable Energy Generation o Policy ST52: Flood Risk and Drainage o Policy ST53: Protecting Water Quality and Management o Policy ST54: Transport Infrastructure o Policy ST55: Promoting Sustainable Transport and Active Travel ▪ Tresswell and Cottam Neighbourhood Plan made February 2019 o Policy 6: Design Principles o Aspiration 1: Road Safety and Traffic o Character Assessment ▪ Rampton and Woodbeck Neighbourhood Plan made 2019 o Objective 4: Natural environment o Policy 5: Development Principles o Policy 6: Heritage Assets in Rampton and Woodbeck o Policy 10: The Protection of the Parish Landscape o Character Assessment
Lincolnshire County Council	▪ Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies o DM1: Presumption in favour of sustainable development o DM4: Historic Environment o M2: Providing for an Adequate Supply of Sand and Gravel o Policy M11: Safeguarding of Mineral Resources o W1: Future requirements for new waste facilities

Local Authority	Identified Documents and/or Relevant Policies
Nottinghamshire County Council	▪ Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1: Waste Core Strategy (2013) o SO2 Care for our environment o SO3 Community well-being o SO4 Energy and climate o SO5 Sustainable transport o Policy WCS1: Presumption in Favour of Sustainable Development o Policy WCS10: Safeguarding Waste Management Sites ▪ Nottinghamshire Minerals Local Plan adopted March 2021 o Policy SP7: Minerals Safeguarding, Consultation Areas and Associated Minerals Infrastructure o Policy MP2c: Sand and Gravel Provision

Table A7 – Made DCOs

Other Made DCOs Identified by the Applicant
▪ Hinkley Point C (Nuclear Generating Station) Order 2013 ▪ Network Rail (Norton Bridge Area Improvements) Order 2014 ▪ Meaford Gas Fired Generating Station Order 2016 ▪ National Grid (Hinkley Point C Connection Project) Order 2016 ▪ Wrexham Gas Fired Generating Station Order 2017 ▪ Silvertown Tunnel Order 2018 ▪ Port of Tilbury (Expansion) Order 2019 ▪ Millbrook Gas Fired Generating Station Order 2019 ▪ Drax Power (Generating Stations) Order 2019 ▪ Lake Lothing (Lowestoft) Third Crossing Order 2020 ▪ Great Yarmouth Third River Crossing Development Consent Order 2020 ▪ Immingham Open Cycle Gas Turbine Order 2020 ▪ Riverside Energy Park Order 2020 ▪ Cleve Hill Solar Park Order 2020 ▪ Little Crow Solar Park Order 2022 ▪ Bridgwater Tidal Barrier Order 2022 ▪ Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 ▪ M25 Junction 28 Development Consent Order 2022 ▪ M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 ▪ Longfield Solar Farm Order 2023 ▪ Boston Alternative Energy Facility Order 2023 ▪ Hornsea Four Offshore Wind Farm Order 2023

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AGLV	Area of Great Landscape Value
AIL	
ALC	Agricultural Land Classification
AMS	Archaeological Mitigation Strategy
AMS	Archaeological Mitigation Strategy
ANCB	Appropriate Nature Conservation Body
AP	Affected Person
AQD	Directive 2008/50/EC on ambient air quality and cleaner air for Europe
AQMA	Air Quality Management Areas
ARI	Access Required Inspection
Art	Article
ASI	Accompanied Site Inspection
BDC	Bassetlaw District Council
BEIS	Department for Business, Energy and Industrial Strategy
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BoSS	Balance of Solar System plant
BS	British Standard
BSMP	Battery Safety Management Plan
BSSS	British Society of Soil Science
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CCC	Committee on Climate Change
CCGT	Combined Cycle Gas Turbine
CCR	Climate Change Resilience
CCTV	Closed Circuit Television
CEMP	Construction Environment Management Plan
CLLP	Central Lincolnshire Local Plan
CNP	Critical National Priority
CSP	Cottam Solar Project
CTMP	Construction Traffic Management Plan
D (number)	Deadline
dB	Decibel

Abbreviation or usage	Reference
DCLG/DLUHC	Former Department for Communities and Local Government, re-organised to form Ministry of Housing, Communities and Local Government (MHCLG) in January 2018 and currently the Department for Levelling Up, Housing and Communities. References to documents (eg Examination Guidance) or decisions taken by the former department are referred to using the abbreviation DCLG.
DCO	Development Consent Order
dDCO	draft Development Consent Order
DECC	Former Department for Energy and Climate Change, reorganised to form BEIS
DESNZ	
DML	Deemed Marine License
dNPS	Draft National Policy Statement
EA	Environment Agency
EA2010	Equality Act 2010
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EL	Examination Library
EM	Explanatory Memorandum
EMF	Electromagnetic Field
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ERP	Emergency Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ (number)	Written examination questions issued by the ExA
fCEMP	Framework Construction Environmental Management Plan
fCTMP	Framework Construction Traffic Management Plan
fDEMP	Framework Decommissioning Environmental Management Plan
FES	Future Energy Scenarios
fOEMP	Framework Operational Environmental Management Plan
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GBS	Gate Burton Scheme
GCC	Grid Connection Corridor
GHG	Green House Gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GP	General Practitioner

Abbreviation or usage	Reference
GVA	Gross Value Added
ha	Hectare
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HDD	Horizontal Directional Drilling
HE	Historic England
HGV	Heavy Goods Vehicle
HIA	Health Impact Assessment
HIA	Health Impact Assessment
Host Authorities	Lincolnshire County Council, Nottinghamshire County Council, Bassetlaw District Council and West Lindsey District Council
HoTs	Heads of Terms
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
HUDU	Healthy Urban Development Unit's
HVAC	Heating, ventilation and air conditioning
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
ICCI	In-combination Climate Change Impact
ICNIRP	International Commission on Non-Ionizing Radiation Protection
ICNIRP	International Commission on Non-Ionizing Radiation Protection
IDB	Internal Drainage Board
IEMA	
IMP	
IP	Interested Party
ISH (number)	Issue Specific Hearing and where followed by a number, the number is a reference to a specific ISH on a date in the examination timetable
km	kilometre
kV	Kilovolt
LAeq,T	the A-weighted continuous sound level measured over a specified period of time (T).
LCA	Local Character Area
LCC	Lincolnshire County Council
LEMP	Landscaping and Ecological Management Plan
LFRS	Lincolnshire Fire and Rescue Service
LIR	Local Impact Report
LLCA	Local Landscape Character Area
LOAEL	Lowest Observable Adverse Effect Level
LRA	Land Research Associate
LSE	Likely Significant Effects

Abbreviation or usage	Reference
LV	Limit value(s) – a regulatory limit expressed as a value above which a regulated substance should not be found in the environment and triggering action for pollution control
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metre
m2	Square metre(s)
m3	Cubic metre(s)
made Order	A statutory Order providing development consent made by the relevant SoS under PA2008, use of this term signifies a reference to a DCO that has been decided
MCZ	
MMO	Marine Management Organization
MSA	Mineral Safeguarding Area
MW	Megawatt
MWh	Megawatt hour
MWp	Megawatt power
NCA	National Character Area
NCC	Nottinghamshire County Council
NE	Natural England
NERC ACT	Natural Environment and Rural Communities Act 2006 (as amended)
NETS	National Electricity Transmission System
NFCC	
NFRS	Nottingham Fire and Rescue Service
NGA	Noise Generating Activities
NGET	National Grid Electricity Transmission Plc
NH	National Highways
No.	Number
NO_2	Nitrogen Dioxide
NOEL	No Observed Effect Level
NOx	Mono-nitrogen oxides
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
oBSMP	Outline Battery Safety Management Plan
ODP	Outline Design Principles
ODS	Outline Drainage Strategy
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing

Abbreviation or usage	Reference
OHID	
oLEMP	Outline Landscape and Ecology Management Plan
OPRoWMP	Outline Public Rights of Way Management Plan
OS	Ordnance Survey
oSMP	Outline Soil Management Plan
OSSCEP	Outline Skills Supply Chain and Employment Plan
PA2008	Planning Act 2008 (as amended)
PCN	
PCS	Power Conversion Systems
PCU	Power Conversion Unit
pDCO	preferred Development Consent Order
PM	Preliminary Meeting
PM10	Particulate Matter (10 micrometres or smaller)
PM2.5	Particulate Matter (2.5 micrometres or smaller)
PP(s)	Protective Provision(s)
PPG	Planning Policy Guidance accompanying the NPPF
PRoW	Public Right of Way
PRoWMP	Public Rights of Way Management Plan
PSED	Public Sector Equality Duty
PV	Photovoltaic
RAF	Royal Air Force
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RVAA	Residential Visual Amenity Assessment
s (number)	Section of a statute and when followed by a number, a particular section number from a named statute
SAC	Special Area of Conservation
SI	Statutory Instrument
SME	Subject Matter Expert
SNCB	Statutory Nature Conservation Body
SNS	Statutory Nuisance Statement
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSBEIS	… for Business, Energy and Industrial Strategy
SoSESNZ	… for Energy Security and Net Zero
SPA	Special Protection Area
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STEM	Science, Technology, Engineering and Mathematics

Abbreviation or usage	Reference
SU(s)	Statutory Undertaker(s)
SuDS	Sustainable Drainage Systems
TA	Transport Assessment
TN	Technical Note
TP	Temporary Possession
TPO	Tree Preservation Order
TRO	Traffic Regulation Orders
TSP	Tillbridge Solar Project
TVIDB	Trent Valley Internal Drainage Board
TWh	Terawatt hours
UK	United Kingdom
UKHSA	United Kingdom Health Security Agency
USI	Unaccompanied Site Inspection
VP	Viewpoint
W	Watts
WBSP	West Burton Solar Project
WFD	Water Framework Directive – Directive 2000/60/EC
WFD Regulations	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WHIASU	Wales Health Impact Assessment Support Unit
WLDC	West Lindsey District Council
WMP	Water Management Plan
WMS	Written Ministerial Statement 2015
WQ	Written Question
WR	Written Representation
WSI	Written Scheme of Investigation (archaeology)
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX C: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

202[*] No. [*]

INFRASTRUCTURE PLANNING

The Gate Burton Energy Park Order 202[*]

Made - - - - ***

Coming into force - - ***

CONTENTS

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SCHEDULE 1 — AUTHORISED DEVELOPMENT

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008 ("the 2008 Act")(**1**) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**2**).

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(**3**).

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)(**4**) 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(**5**) and has had regard to the documents and matters referred to in section 105(2)(**6**) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**7**), 115(**8**), 120(**9**), 122(**10**) and 123(**11**) of the 2008 Act, makes the following Order—

(**1**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
(**2**) 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, 2017/572 and S.I. 2018/378.
(**3**) S.I. 2010/103.
(**4**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**5**) S.I. 2017/572.
(**6**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(**7**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**8**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Gate Burton Energy Park Order and comes into force on [*] 202[*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**12**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**13**);

"the 1980 Act" means the Highways Act 1980(**14**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**15**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**16**);

"the 1989 Act" means the Electricity Act 1989(**17**);

"the 1990 Act" means the Town and Country Planning Act 1990(**18**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**19**);

"the 2008 Act" means the Planning Act 2008(**20**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**21**);

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

"Archaeological mitigation strategy" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified), including Part 1 and Part 2, and which are certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of "development") of the 2008 Act authorised by this Order;

"book of reference" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

"carriageway" has the same meaning as in the 1980 Act;

(**9**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**10**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**11**) Ibid.
(**12**) 1961 c. 33.
(**13**) 1965 c. 56.
(**14**) 1980 c. 66.
(**15**) 1981 c. 66.
(**16**) 1984 c. 27.
(**17**) 1989 c. 29.
(**18**) 1990 c. 8.
(**19**) 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).
(**20**) 2008 c. 29.
(**21**) 2009 c. 23.

"commence" means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act(**22**) (which explains when development begins), comprised in or carried out or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"Cottam undertaker" means the undertaker for the purposes of the Cottam Solar Project Order 202[*];

"Crown land plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the special category land plan for the purposes of this Order;

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

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"environmental statement" means the document of that name identified in the table at Schedule 12 (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;

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

"framework construction environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

"framework construction traffic management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

"framework decommissioning environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework decommissioning environmental management plan for the purposes of this Order;

"framework operational environmental management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework operational environmental management plan for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**23**);

"holding company" has the same meaning as in section 1159 of the Companies Act 2006(**24**);

"land plans" means the plans of that name identified in the table at Schedule 12 (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;

"MMO" means the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH;

(**22**) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).
(**23**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**24**) 2006 c. 46.

"National Grid" means National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by the authorised development shown on the land plans and described in the book of reference;

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

"outline battery safety management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

"outline design principles" means the document of that name identified in the table of Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

"outline drainage strategy" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order;

"outline public rights of way management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order;

"outline skills, supply chain and employment plan" means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order;

"outline soil management plan" means the document of that name identified in the table at Schedule 12 (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(**25**);

"permitted preliminary works" means all or any of—

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

(b) removal of plant and machinery;

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

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

(e) diversion 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, demolition of existing buildings and structures); or

(i) advanced planting to allow for an early establishment of protective screening;

(**25**) 1981 c. 67.

"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;

"relevant planning authority" means the local planning authority for the area in which the land to which the provisions of this Order apply is situated and as more particularly described for the purposes of the requirements in Schedule 2 (requirements);

"requirements" means those matters set out in Schedule 2 (requirements) and "requirement" means any one of the requirements;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**26**);

"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(**27**);

"streets, access and rights of way plans" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the streets, access and rights of way plans for the purposes of this Order;

"street works" means the works listed in article 8(1) (street works);

"subsidiary" has the same meaning as in section 1159 of the Companies Act 2006(**28**);

["Tillbridge undertaker" means the undertaker for the purposes of the Tillbridge Solar Project Order 202[*];]

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**29**);

"traffic regulation measures plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

"undertaker" means Gate Burton Energy Park Limited (company number 12660764) and any other person who for the time being has the benefit of this Order in accordance with article 34 (benefit of the Order) or article 35 (consent to transfer the benefit of the Order);

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

"vegetation removal plan" means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the vegetation removal plan for the purposes of this Order;

"watercourse" includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

"West Burton undertaker" means the undertaker for the purposes of the West Burton Solar Project Order 202[*];

"works plans" means the plans of that name identified in the table at Schedule 12 (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 include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in

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(**26**) 2003 c. 21.

(**27**) "street authority" is defined in section 49 which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

(**28**) 2006 c. 46.

(**29**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; and S.I. 1999/1920 and S.I 2001/1400.

this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans and streets, access and rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (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 and a reference to "Work No. [X]" or "numbered work [X]" means numbered works [X]A and [X]B inclusive and the same principle applies to such numbered works that contain letters.

(5) In this Order, the expression "includes" is to be construed without limitation.

(6) In this Order, references to any statutory body include that body's successor bodies.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

(2) 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.

Application and modification of statutory provisions

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

(a) section 32(**30**) (variation of awards) of the Land Drainage Act 1991;

(b) the provisions of any byelaws made under section 66(**31**) (powers to make byelaws) of the Land Drainage Act 1991;

(c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(**32**);

(d) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991(**33**);

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**34**) in respect of a flood risk activity only;

(f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order and do not impact on the operation or maintenance of the River Trent as a navigable river; and

(g) the provisions of the Neighbourhood Planning Act 2017(**35**) insofar as they relate to the temporary possession of land under articles 29 (temporary use of land for constructing the authorised development) and 30 (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(**36**) 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) 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(**37**) 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

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**38**) 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—

(a) the defendant shows that the nuisance—

(**30**) Section 32 was amended by S.I. 2013/755.
(**31**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**32**) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
(**33**) 1991 c. 56. Section 118 was amended by sections 2(2)(b) and 5(5)(f) of the Environment Act 1995 (c. 25) and sections 66(2)(a) and (b) of the Environment (Wales) Act 2016 (anaw 3).
(**34**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
(**35**) 2017 c. 20.
(**36**) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**37**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
(**38**) 1990 c. 43.

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**39**), or a consent given under section 61 (prior consent for work on construction site) of that Act; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of, or in connection with, the construction or maintenance of the authorised development.

PART 3

STREETS

Street works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus in the street;

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

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

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

(a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(**39**) 1974 c. 40.

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

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; 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, such consent to be in a form reasonably required by 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

10.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway or street authority (as relevant) and, unless otherwise agreed by the highway or 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 highway or street authority (as relevant).

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 9(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 stopping up of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street or public right of way;

(b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, 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 stop up, 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 (streets to be temporarily stopped up) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(b) the public rights of way specified in column 2 of the table in Part 2 (public rights of way to be temporarily stopped up and diverted) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(c) the public rights of way specified in column 2 of the table in Part 3 (permanent use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table; and

(e) the public rights of way specified in column 2 of the table in Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) For the purposes of sub-paragraphs (1) and (3), the undertaker must not temporarily stop up, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) any street or public right of way specified in paragraph (3) without first consulting the street authority; 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 stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) The undertaker, during and for the purposes of carrying out the authorised development, may stop up, prohibit the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after 04 January 2024.

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

Use of private roads

12.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which sub-paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by sub-paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under sub-paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

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

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (permanent means of access to works); and

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

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 8 (street works) and article 10(1) (construction and maintenance of altered streets); or

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

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

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

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

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

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

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

Traffic regulation measures

15.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of the table in Schedule 8 (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(**40**).

(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 of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

(c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

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

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

(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(**41**) when in accordance with regulation 3(5) of those regulations.

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

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

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

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

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

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper 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 specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**42**) (road traffic contraventions subject to civil enforcement).

(**40**) S.I. 2016/362.
(**41**) S.I. 2011/935.
(**42**) 2004 c. 18.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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(**43**).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 14 (protective provisions)), the provisions of Part 3 of Schedule 14 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**44**).

(8) In this article—

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

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**45**) have the same meaning as in that Act.

Removal of human remains

17.—(1) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(**43**) 1991 c. 56.
(**44**) S.I. 2016/1154.
(**45**) 1991 c. 57.

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and reinterred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such reinterment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question cannot be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and reinterring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

(a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and

(b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(**46**) is not to apply to a removal carried out in accordance with this article.

Protective works to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order land as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or

(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

(**46**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule 1 paragraphs 1 and 2).

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

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

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

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

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development or enter on any land upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and 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 the digging of trenches; and

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

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

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

(a) must, if so required before entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

20.—(1) The undertaker may—

(a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and

(b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and article 29 (temporary use of land for constructing the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to paragraph (2) and article 29 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 20 (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 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 9 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 (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) This article is subject to article 8 (Crown rights).

Private rights

23.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

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

(c) on commencement of any activity authorised by this Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right; or

(c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

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

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

(5) Section 5A (time limit for general vesting declaration) is omitted(**47**).

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park Order 202[*].".

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

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

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

"(2) But see article 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park Order 202[*], which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

(**47**) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

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

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

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

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

Power to override easements and other rights

26.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

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

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

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

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

(c) the use of any land within the Order land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.

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

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

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

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

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

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

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

(ii) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the Compulsory Purchase Act 1965

27.—(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 the High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park Order [20**]".

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

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the Gate Burton Energy Park Order [20**]".

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

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

"(2) But see article 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park Order 202[*], which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Gate Burton Energy Park Order 202[*].".

Rights under or over streets

28.—(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

29.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and

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

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

(c) construct temporary works (including means of access), haul roads, security fencing, bridges, structures and buildings on that land;

(d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;

(e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

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

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

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

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, debris, drain or electric line removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works), Schedule 5 (alteration of streets) or Schedule 7 (permanent means of access to works);

(d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

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

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 19(land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 28 (rights under or over streets).

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where "the maintenance period" means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 7 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

31. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

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

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

Apparatus and rights of statutory undertakers in stopped up streets

32. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of altered streets) or article 11 (temporary stopping up of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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) Sub-paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers), any person who is—

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

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

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

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**48**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

34.—(1) Subject to article 35 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Sub-paragraph (1) does not apply to Work No. 4C in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

Consent to transfer the benefit of the Order

35.—(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 (9), 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 transfer or grant relates to Work No. 4B and the transferee or lessee (as relevant) is the Cottam undertaker or the West Burton undertaker [or the Tillbridge undertaker];

(c) the transferee or lessee is a holding company or subsidiary of the undertaker; or

(**48**) 2003 c. 21.

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

(i) no such claims have been made;

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

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

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

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

(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licence.

(5) 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).

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

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

(b) subject to paragraph (7), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (9), 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.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notification.

(8) 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.

(9) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

(c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application of landlord and tenant law

36.—(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 the purposes of the 1990 Act

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

38.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

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

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

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

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), 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 2 of the table in Schedule 16 (hedgerows to be removed) as shown on the vegetation removal 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(**49**).

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

Trees subject to tree preservation orders

39.—(1) The undertaker may fell or lop any tree described in Schedule 17 (trees subject to tree preservation orders) or cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation 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.

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

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

No double recovery

41. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

Arbitration

42.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 13 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Protective provisions

43. Schedule 14 (protective provisions) has effect.

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(**50**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(**50**) 1978 c. 30.

Procedure in relation to certain approvals etc.

45.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 15 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 15 (procedure for discharge of requirements) and where stated to the contrary if, within 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) Schedule 15 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any dispute under article 18(6) (protective work to buildings) to which paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 14 (protective provisions).

Guarantees in respect of payment of compensation

46.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order 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) in respect of the exercise of the relevant provision in relation to that part of the Order land; or

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

(2) The provisions are—

(a) article 20 (compulsory acquisition of land);

(b) article 22 (compulsory acquisition of rights);

(c) article 23 (private rights);

(d) article 28 (rights under or over streets);

(e) article 29 (temporary use of land for constructing the authorised development);

(f) article 30 (temporary use of land for maintaining the authorised development); and

(g) article 31 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such

compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Compulsory acquisition of land – incorporation of the mineral code

47. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**51**) are incorporated into this Order subject to the modifications that—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for the "undertaking" substitute "authorised development"; and

(c) paragraph 8(3) is not incorporated.

Crown rights

48.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department

(**51**) 1981 c. 67.

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

"balance of solar system (BoSS) plant" means inverters, transformers and switch gear and would be either—

(a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—

(i) a "solar station" located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or

(ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or

(b) string inverters attached either to mounting structures or a ground mounted frame, switchgear and transformers on a concrete foundation slab or placed on metal skids;

"electrical cables" means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

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

"inverter" means electrical equipment required to convert direct current power to alternating current;

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

"solar panel" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"substation" means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

"switch gear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

"transformer" means a structure serving to transform electricity to a higher voltage.

2. In the Districts of West Lindsey and Bassetlaw and in the Counties of Lincolnshire and 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.

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

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar panels fitted to mounting structures; and

(b) balance of solar system (BoSS) plant.

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

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

(i) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles;

(ii) transformers and associated bunding;

(iii) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;

(iv) containers or enclosures housing all or any of Work Nos. 2(ii) and (iii) and ancillary equipment;

(v) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(i) or (iv) or located separately in its own container or enclosure;

(vi) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(i), (iv) and (v), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;

(vii) electrical cables including electrical cables connecting to Work No. 3;

(viii) fire safety infrastructure including water storage tanks and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles; and

(ix) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility.

Work No. 3— development of an onsite substation and associated works including—

(i) substation, switch room buildings and ancillary equipment including reactive power units;

(ii) monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms; and

(iii) 400 kilovolt harmonic filter compound.

Work No. 4— works to lay high voltage electrical cables, access and construction compounds for the electrical cables including–

(a) Work No. 4A–

(i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 3 and/or Work No.5 to Work No. 4B including tunnelling, boring and drilling works for trenchless crossings;

(ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and

(iii) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(b) Work No. 4B –

(i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 4A to Work No. 4C including tunnelling, boring and drilling works for trenchless crossings;

(ii) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, roads, including the laying and construction of drainage infrastructure, signage and information boards; and

(iii) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(c) Work No. 4C – electrical engineering works within or around the National Grid Cottam substation including-

(i) the laying and terminating of one 400 kilovolt cable circuit;

(ii) the installation of one 400 kilovolt generation bay; and

(iii) ancillary equipment;

Work No. 5— works including—

(a) electrical cables, including but not limited to electrical cables connecting Works 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS;

(b) fencing, gates, boundary treatment and other means of enclosure;

(c) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;

(d) landscaping and biodiversity mitigation and enhancement measures including planting;

(e) improvement, maintenance and use of existing private tracks;

(f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards;

(g) laying down of temporary footpath diversions, permissive paths, signage and information boards;

(h) earthworks;

(i) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;

(j) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(k) works to divert and underground existing electrical overhead lines.

Work No. 6— construction and decommissioning compounds including—

(a) areas of hardstanding;

(b) car parking;

(c) site and welfare offices, canteens and workshops;

(d) area to store materials and equipment;

(e) storage and waste skips;

(f) area for download and turning;

(g) security infrastructure, including cameras, perimeter fencing and lighting;

(h) site drainage and waste management infrastructure (including sewerage); and

(i) electricity, water, waste water and telecommunications connections

Work No. 7— office, warehouse and plant storage building comprising—

(a) offices and welfare facilities;

(b) storage facilities;

(c) waste storage within a fenced compound;

(d) parking areas; and

(e) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 8— works to facilitate access to Work Nos. 1 to 9 including–

(a) creation of accesses from the public highway;

(b) creation of visibility splays; and

(c) works to widen and surface the public highway and private means of access.

Work No. 9— areas of habitat management including–

(a) landscape and biodiversity enhancement measures;

(b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and

(c) fencing, gates, boundary treatment and other means of enclosure.

In connection with and in addition to Work Nos. 1 to 9 further associated development within the Order limits including—

(a) works for the provision of fencing and security measures such as CCTV and lighting;

(b) laying down of internal access tracks;

(c) ramps, means of access, non-motorised links, footpaths, footways;

(d) boundary treatments, including means of enclosure;

(e) bunds, embankments, trenching and swales;

(f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(h) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(i) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(j) 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;

(k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(l) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;

(m) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(n) tunnelling, boring and drilling works;

(o) works for the benefit of protection of land affected by the authorised development;

(p) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and

(q) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2
REQUIREMENTS

Interpretation

1. In this Schedule—

"relevant planning authority" means—

(a) Lincolnshire County Council for the purposes of:

(i) requirement 6;

(ii) requirement 10;

(iii) requirement 14;

(iv) requirement 16;

(v) requirement 17; and

(b) West Lindsey District Council and Bassetlaw District Council for the purposes of:

(i) requirement 3;

(ii) requirement 4;

(iii) requirement 5;

(iv) requirement 7;

(v) requirement 8;

(vi) requirement 9;

(vii) requirement 12;

(viii) requirement 13;

(ix) requirement 15;

(x) requirement 18;

(xi) requirement 19; and

"relevant planning authorities" means Lincolnshire County Council, West Lindsey District Council and Bassetlaw District Council, as applicable.

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.

Approved details and amendments to them

3.—(1) With respect to the documents certified under Article 40 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority or relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority or relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant planning authorities (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.

Community liaison group

4.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authorities for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until the date of final commissioning of the final part of the authorised development unless otherwise agreed with the relevant planning authorities.

Detailed design approval

5.—(1) No part of the authorised development may commence until details of—

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

(f) vehicular and pedestrian access, parking and circulation areas;

(g) refuse or other storage units, signs and lighting;

(h) drainage, water, power and communications cables and pipelines;

(i) landscaping works, planting works and programme for implementation

relating to that part have been submitted to and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The details submitted must accord with the outline design principles.

(3) The authorised development must be carried out in accordance with the approved details.

Battery safety management

6.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority.

(2) The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The battery safety management plan must be substantially in accordance with the outline battery safety management plan.

(4) The relevant planning authority must consult with West Lindsey District Council, Lincolnshire Fire and Rescue, Nottinghamshire Fire and Rescue Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(5) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.

Landscape and ecological management plan

7.—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with the Environment Agency.

(2) The landscape and ecological management plan must be substantially in accordance with the outline landscape and ecological management plan.

(3) The 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) For the purposes of sub-paragraph (1), "commence" includes part (h) (site clearance (including vegetation removal, demolition of existing buildings and structures)) and part (i) (advanced planting to allow for an early establishment of protective screening) of permitted preliminary works.

Biodiversity net gain

8.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

9.—(1) No part 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 construction environmental management plan, for that part have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) No part of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that part (which must be substantially in accordance with the relevant outline design principles) have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

(6) Any approved permanent fencing in a part must be completed before the date of final commissioning in respect of such part.

Surface and foul water drainage

10.—(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (which must be substantially in accordance with the outline drainage strategy) have been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning

authorities, and in each case in consultation with Anglian Water Services Limited or its successor in function as the relevant water undertaker.

(2) Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

11. The authorised development must be implemented in accordance with the archaeological mitigation strategy.

Construction environmental management plan

12.—(1) No part of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the framework construction environmental management plan) for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority and the Environment Agency.

(2) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

(3) The details on the amount and type of waste from the authorised development and how it will be reused, recycled or disposed of is to be set out in a Waste Management Plan which is to be included as an appendix to the construction environmental management plan.

Operational environmental management plan

13.—(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority for that part, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with Lincolnshire County Council in its capacity as the planning waste authority, the relevant highway authority and the Environment Agency.

(2) The operational environmental management plan must be substantially in accordance with the framework operational environmental management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Construction traffic management plan

14.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority for that part, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority and West Lindsey District Council.

(2) The construction traffic management plan must be substantially in accordance with the framework construction traffic management plan.

(3) Before approving the construction traffic management plan the relevant planning authority must consult with the relevant highway authority.

(4) The construction traffic management plan must be implemented as approved.

Operational noise

15.—(1) No part of numbered Works No. 1, No. 2 and No. 3 may commence until an operational noise assessment containing details of how the design of that numbered works has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Public rights of way diversions

16.—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with the relevant highway authority.

(2) The public rights of way management plan must be substantially in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

Soils management

17.—(1) No part of the authorised development may commence until a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to construction activities) for that part has been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) All construction works associated with the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (1).

(3) Prior to the date of final commissioning for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to operational activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(4) The operation of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (3) and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(5) Prior to the start of any decommissioning works for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to decommissioning activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(6) The decommissioning of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (5).

Skills, supply chain and employment

18.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities following consultation with Lincolnshire County Council.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Decommissioning and restoration

19.—(1) Decommissioning of the authorised development must commence no later than 60 years following the date of final commissioning of the authorised development.

(2) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning.

(3) Within 12 months of the date notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority for that part a decommissioning environmental management plan for approval which must include a decommissioning traffic management plan and site waste management plan, in consultation with the Environment Agency.

(4) Where the undertaker decides to decommission a part of the authorised development that falls within the administrative areas of multiple planning authorities, the decommissioning environmental management plan must be submitted to each relevant planning authority and the approval of all relevant planning authorities is required for the purposes of this paragraph.

(5) The decommissioning environmental management plan must be substantially in accordance with the framework decommissioning environmental management plan.

(6) No decommissioning works must be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works.

(7) The decommissioning environmental management plan must be implemented as approved.

(8) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

(a) Great Grimsby and Sheffield Junction Railway Act 1845(**52**);

(b) Great Northern Railway Act 1846(**53**);

(c) Sheffield and Lincolnshire Junction Railway Act 1846(**54**);

(d) Manchester, Sheffield, and Lincolnshire Railways, and Manchester and Lincolnshire Union Railway and Chesterfield and Gainsborough Canal Amalgamation Act 1847(**55**);

(e) Trent (Burton on Trent and Humber) Navigation Act 1887(**56**);

(f) Trent Navigation Act 1906(**57**);

(g) Great Central Railway Act 1907(**58**);

(h) Lincolnshire Rivers Fisheries Provisional Order Confirmation Act 1928(**59**);

(i) Trent and Lincolnshire Water Act 1971(**60**); and

(j) Anglian Water Authority Act 1977(**61**).

(**52**) 1845 c. l.
(**53**) 1846 c. lxxi.
(**54**) 1846 c. ccciv.
(**55**) 1847 c. cxc.
(**56**) 1887 c. cxv.
(**57**) 1906 c. lvii.
(**58**) 1907 c. lxxviii.
(**59**) 1928 c. lxvii.
(**60**) 1971 c. xiii.
(**61**) 1977 c. i.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

"cable works" means works to place, retain and maintain underground electrical and communications apparatus; and

"culvert works" means repair, replace, extend or alter and maintain an existing culvert.

(1) *Area*	*(2)* *Street*	*(3)* *Description of the street works*
District of West Lindsey	B1241 Kexby Lane	Cable works and culvert works beneath the width of the street for the length shown in green on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Gainsborough Road A156 Southbound	Cable works beneath the width of the street for the length shown in green on sheet 4 of the streets, rights of way and access plans.
District of West Lindsey	Clay Lane	Cable works beneath the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Willingham Road	Cable works beneath the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	A1500 Stow Park Road	Cable works and culvert works beneath the width of the street for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A156 High Street	Cable works beneath the width of the street for the lengths shown in green on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Headstead Bank	Cable works beneath the width of the street for the length shown in green on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Cow Pasture Lane	Cable works beneath the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.

District of Bassetlaw	Cottam Road	Cable works beneath the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Nightleys Road	Cable works beneath the width of the street for the length shown in light blue on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Shortleys Road	Cable works beneath the width of the street for the length shown in light blue on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Torksey Ferry Road	Cable works beneath the width of the street for the length shown in light blue on sheets 17 and 18 of the streets, rights of way and access plans.

SCHEDULE 5

Article 9 and Article 10

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
District of West Lindsey	Field Access Kexby Lane B1241 Westbound	Permanent alteration of layout at the point marked 1/01 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Kexby Lane B1241 Eastbound	Permanent alteration of layout at the point marked 1/02 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Kexby Lane B1241 Eastbound	Permanent alteration of layout at the point marked 1/04 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Kexby Lane B1241 Westbound	Permanent alteration of layout at the point marked 1/05 on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Gainsborough Road A156 Southbound	Permanent alteration of layout at the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
District of West Lindsey	Field Gate Access Willingham Road Eastbound	Permanent alteration of layout at the point marked 6/02 on sheet 6 of the streets, rights of way and access plans.
District of West Lindsey	Access Track Marton Road Northbound	Permanent alteration of layout at the point marked 7/01 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Private Means of Access off Marton Road Northbound	Permanent alteration of layout at the point marked 7/02 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Proposed Access off Private Means of Access off Marton Road Northbound	Permanent alteration of layout at the point marked 7/03 on sheet 7 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/02 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/03 on sheet 8 of the streets, rights of way and access plans.

District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/05 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/07 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Eastbound	Permanent alteration of layout at the point marked 8/08 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Marton Road Northbound	Permanent alteration of layout at the point marked 8/09 on sheet 8 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Clay Lane Eastbound	Permanent alteration of layout at the point marked 10/08 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/09 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Field Access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/10 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Westbound	Permanent alteration of layout at the point marked 10/11 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access Clay Lane Eastbound	Permanent alteration of layout at the point marked 10/14 on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access off Eastbound carriageway of A1500 Stow Park Road	Permanent alteration of layout at the point marked 11/06 on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	Proposed access off Westbound carriageway of A1500 Stow Park Road	Permanent alteration of layout at the point marked 11/07 on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	Field Access A156 High Street Northbound	Permanent alteration of layout at the point marked 12/08 on sheet 12 of the streets, rights of way and access plans.
District of West Lindsey	Access Track A156 High Street Northbound	Permanent alteration of layout at the point marked 12/09 on sheet 12 of the streets, rights of way and access plans.
District of West Lindsey	Access Track A156 High Street Northbound	Permanent alteration of layout at the point marked 12/10 on sheet 12 of the streets, rights of way and access plans.

District of West Lindsey	Proposed access off Northbound Carriageway of A156 High Street	Permanent alteration of layout at the point marked 12/11 on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access off existing access 14/03	Permanent alteration of layout at the point marked 14/02 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Access Track Headstead Bank Southbound	Permanent alteration of layout at the point marked 14/03 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Proposed Access off Headstead Bank Northbound	Permanent alteration of layout at the point marked 14/20 on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Existing access off Cow Pasture Lane	Permanent alteration of layout at the point marked 15/09 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Proposed Access off Cottom Road Eastbound	Permanent alteration of layout at the point marked 15/10 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Existing Field access off Cottam Road Westbound	Permanent alteration of layout at the point marked 15/01 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Proposed Access off Cow Pasture Lane	Permanent alteration of layout at the point marked 15/15 on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access Torksey Ferry Road Eastbound	Permanent alteration of layout at the point marked 17/02 on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access Torksey Ferry Road Westbound	Permanent alteration of layout at the point marked 17/05 on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access Shortleys Lane Northbound	Permanent alteration of layout at the point marked 17/18 on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Field Access Shortleys Lane Southbound	Permanent alteration of layout at the point marked 17/19 on sheet 17 of the streets, rights of way and access plans.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
District of West Lindsey	Junction of A1500 Stow Park	Temporary alteration of layout

Road and A156 High Street	within the area shaded green on Sheet 11 of the streets, rights of way and access plans.

SCHEDULE 6

Article 11

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

STREETS TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Street*	*(3)* *Measures*
District of West Lindsey	B1241 Kexby Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 1 of the streets, rights of way and access plans.
District of West Lindsey	Clay Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Willingham Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 10 of the streets, rights of way and access plans.
District of West Lindsey	Junction of A1500 Stow Park Road and A156 High Street	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A1500 Stow Park Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the length shown in green on sheet 11 of the streets, rights of way and access plans.
District of West Lindsey	A156 High Street	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the length shown in green on sheet 12 of the streets, rights of way and access plans.
District of Bassetlaw	Headstead Bank	Temporarily closed to all traffic save for traffic under the direction of the undertaker

		for the width of the street for the length shown in green on sheet 14 of the streets, rights of way and access plans.
District of Bassetlaw	Cow Pasture Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Cottam Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in green on sheet 15 of the streets, rights of way and access plans.
District of Bassetlaw	Nightleys Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in light blue on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Shortleys Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in light blue on sheet 17 of the streets, rights of way and access plans.
District of Bassetlaw	Torksey Ferry Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street for the length shown in light blue on sheets 17 and 18 of the streets, rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP AND DIVERTED

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
District of West Lindsey	LL | Bram | 66/1	Public right of way to be temporarily stopped up and diverted between the points PRoW-12/01 and PRoW-12/02 as shown on sheet 12 of the streets, access and rights of way plans to facilitate construction of the authorised

		development.
District of Bassetlaw	NT | Cottam | FP3	Public right of way to be temporarily stopped up and diverted between the points PRoW-14/01 and PRoW-14/02 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Cottam | RB4	Public right of way to be temporarily stopped up and diverted between the points PRoW-14/03 and PRoW-14/04 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | South Leverton | BOAT16	Public right of way to be temporarily stopped up and diverted between the points PRoW-15/01 and PRoW-15/02 as shown on sheet 15 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP5	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/01 and PRoW-17/02 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP6	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/03 and PRoW-17/04 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT13	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/06 and PRoW-18/02 as shown on sheets 17 and 18 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP20	Public right of way to be

		temporarily stopped up and diverted between the points PRoW-17/12 and PRoW-17/13 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT12	Public right of way to be temporarily stopped up and diverted between the points PRoW-17/14 and PRoW-17/15 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.

PART 3

PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
District of West Lindsey	LL | Knai | 44/1	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-2/01 and PRoW-2/02 as shown on sheet 2 of the streets, access and rights of way plans to facilitate construction and operation of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT13	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-17/07 and PRoW-18/02 as shown on sheets 17 and 18 of the streets, access and rights of way plans to facilitate construction and operation of the authorised development.

PART 4

TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure (Public Right of Way to be managed during construction to maintain Public Right of Way continuity and access through the site)*
District of West Lindsey	LL | Knai | 44/1	Public Right of Way between points PRoW-2/01 and PRoW-2/02 as shown on sheet 2 of

		the streets, access and rights of way plans to be managed during construction of the authorised development.
District of West Lindsey	LL | Mton | 68/1	Public Right of Way between points PRoW-11/01 and PRoW-11/02 as shown on sheet 11 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Cottam | FP1	Public Right of Way between points PRoW-13/01 and PRoW-13/02 as shown on sheet 13 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | South Leverton | BOAT16	Public Right of Way between points PRoW-15/02 and PRoW-15/03 as shown on sheet 15 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT13	Public Right of Way between points PRoW-17/05 and PRoW-17/06 as shown on sheet 17 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT13	Public Right of Way between points PRoW-17/08 and PRoW-17/09 as shown on sheet 17 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP20	Public Right of Way between points PRoW-17/12 and PRoW-17/13 as shown on sheet 17 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT12	Public Right of Way between points PRoW-17/14 and PRoW-17/15 as shown on sheet 17 of the streets, access and rights of way plans to be managed during construction of the authorised development.
District of Bassetlaw	NT | Rampton | BOAT13	Public Right of Way between points PRoW-17/07 and PRoW-18/01 as shown on

		sheets 17 and 18 of the streets, access and rights of way plans to be managed during construction of the authorised development.

PART 5

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure (Public Right of Way to be managed during construction to maintain Public Right of Way continuity and access through the site)*
District of Bassetlaw	NT | Cottam | FP3	Use of motor vehicles under the direction of the undertaker between points PRoW-14/01 and PRoW-14/02 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Cottam | RB4	Use of motor vehicles under the direction of the undertaker between points PRoW-14/03 and PRoW-14/04 as shown on sheet 14 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | South Leverton | BOAT16	Use of motor vehicles under the direction of the undertaker between points PRoW-15/01 and PRoW-15/02 as shown on sheet 15 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP5	Use of motor vehicles under the direction of the undertaker between points PRoW-17/01 and PRoW-17/02 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.
District of Bassetlaw	NT | Rampton | FP20	Use of motor vehicles under the direction of the undertaker between points PRoW-17/12 and PRoW-17/13 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the

		authorised development.
District of Bassetlaw	NT | Rampton | BOAT12	Use of motor vehicles under the direction of the undertaker between points PRoW-17/14 and PRoW-17/15 as shown on sheet 17 of the streets, access and rights of way plans to facilitate construction of the authorised development.

SCHEDULE 7

Article 13

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
District of West Lindsey	Kexby Lane B1241 Eastbound	The provision of a permanent means of access to the authorised development from the point marked 1/02 on the streets, access and rights of way plans.
District of West Lindsey	Kexby Lane B1241 Westbound	The provision of a permanent means of access to the authorised development from the point marked 1/05 on the streets, access and rights of way plans.
District of West Lindsey	Gainsborough Road A156 Southbound	The provision of a permanent means of access to the authorised development from the point marked 4/02 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/01 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/02 on the streets, access and rights of way plans.
District of West Lindsey	Marton Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 7/03 on the streets, access and rights of way plans.
District of West Lindsey	Clay Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 10/09 on the streets, access and rights of way plans.
District of West Lindsey	Clay Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 10/11 on the streets, access and rights of way plans.

District of West Lindsey	Clay Lane Eastbound	The provision of a permanent means of access to the authorised development from the point marked 10/14 on the streets, access and rights of way plans.
District of West Lindsey	Eastbound carriageway of Stow Park Road	The provision of a permanent means of access to the authorised development from the point marked 11/06 on the streets, access and rights of way plans.
District of West Lindsey	Westbound carriageway of Stow Park Road	The provision of a permanent means of access to the authorised development from the point marked 11/07 on the streets, access and rights of way plans.
District of West Lindsey	A156 High Street Northbound	The provision of a permanent means of access to the authorised development from the point marked 12/09 on the streets, access and rights of way plans.
District of West Lindsey	Northbound Carriageway of A156 High Street	The provision of a permanent means of access to the authorised development from the point marked 12/10 on the streets, access and rights of way plans.
District of West Lindsey	Southbound Carriageway of A156	The provision of a permanent means of access to the authorised development from the point marked 12/11 on the streets, access and rights of way plans.
District of Bassetlaw	Field gate off existing access 14/03	The provision of a permanent means of access to the authorised development from the point marked 14/02 on the streets, access and rights of way plans.
District of Bassetlaw	Headstead Bank Southbound	The provision of a permanent means of access to the authorised development from the point marked 14/03 on the streets, access and rights of way plans.
District of Bassetlaw	Headstead Bank Northbound	The provision of a permanent means of access to the authorised development from the point marked 14/20 on the streets, access and rights of way plans.
District of Bassetlaw	Cow Pasture Lane	The provision of a permanent means of access to the

		authorised development from the point marked 15/09 on the streets, access and rights of way plans.
District of Bassetlaw	Cottam Road Eastbound	The provision of a permanent means of access to the authorised development from the point marked 15/10 on the streets, access and rights of way plans.
District of Bassetlaw	Cottam Road Westbound	The provision of a permanent means of access to the authorised development from the point marked 15/01 on the streets, access and rights of way plans.
District of Bassetlaw	Cow Pasture Lane	The provision of a permanent means of access to the authorised development from the point marked 15/15 on the streets, access and rights of way plans.
District of Bassetlaw	Torksey Ferry Road Eastbound	The provision of a permanent means of access to the authorised development from the point marked 17/02 on the streets, access and rights of way plans.
District of Bassetlaw	Torksey Ferry Road Westbound	The provision of a permanent means of access to the authorised development from the point marked 17/05 on the streets, access and rights of way plans.
District of Bassetlaw	Shortleys Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 17/18 on the streets, access and rights of way plans.
District of Bassetlaw	Shortleys Road Southbound	The provision of a permanent means of access to the authorised development from the point marked 17/19 on the streets, access and rights of way plans.

SCHEDULE 8

Article 15

TRAFFIC REGULATION MEASURES

(1) *Area*	*(2)* *Extent of temporary traffic signal and banksman control area*
B1241 Kexby Lane Eastbound and Westbound Carriageway to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 1 of the Traffic Regulation Measures Plans
A156 Gainsborough Road Northbound and Southbound Carriageway to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheets 4, 5 and 9 of the Traffic Regulation Measures Plans
Clay Lane Eastbound and Westbound Carriageway to facilitate the construction of operation accesses only for the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 10 of the Traffic Regulation Measures Plans
Private Means of Access off Marton Road Northbound to facilitate construction of the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 7 of the Traffic Regulation Measures Plans
Junction of A1500 Stow Park Road and A156 High Street to facilitate abnormal load access to the solar and energy storage park	Extents of traffic signals and banksman control presented on Sheet 11 of the Traffic Regulation Measures Plans
A1500 Stow Park Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 11 of the Traffic Regulation Measures Plans
A156 High Street Northbound and Southbound Carriageway adjacent to existing sewage works to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 12 of the Traffic Regulation Measures Plans
A156 High Street Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 12 of the Traffic Regulation Measures Plans
Headstead Bank Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 14 of the Traffic Regulation Measures Plans
Cow Pasture Lane Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 15 of the Traffic Regulation Measures Plans
Cottam Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 15 of the Traffic Regulation Measures Plans
Torksey Ferry Road Eastbound and Westbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 17 of the Traffic Regulation Measures Plans
Nightleys Road Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 17 of the Traffic Regulation Measures Plans
Shortleys Road Northbound and Southbound Carriageway to facilitate construction of the cable installation works	Extents of traffic signals and banksman control presented on Sheet 17 of the Traffic Regulation Measures Plans
Torksey Ferry Road Eastbound and Westbound Carriageway to facilitate construction of the	Extents of traffic signals and banksman control presented on Sheets 17 and 18 of the Traffic

SCHEDULE9 Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"access rights" means rights over land to—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;

(c) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;

(d) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; and

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"cable rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;

(c) continuous vertical and lateral support for the authorised development;

(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;

(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with

the implementation and maintenance of landscaping and ecological mitigation or enhancement works;

(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and

(g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"services rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

(1) *Plot reference number shown on the Land Plans*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
1/3	access rights
1/6	cable rights
3/2	cable rights
4/3	access rights and services rights
4/4	access rights and services rights
5/1	access rights and services rights
5/2	access rights and services rights
5/11	cable rights
6/3	cable rights
6/6	cable rights
6/7	cable rights
6/8	cable rights
6/10	cable rights
6/11	cable rights
7/3	access rights
7/6	access rights
7/7	access rights
9/1	access rights and services rights
9/2	access rights
9/3	access rights and services rights
10/1	access rights
10/2	access rights and services rights
10/5	cable rights
10/6	cable rights
10/7	cable rights
10/10	access rights
10/15	cable rights

11/1	access rights
11/2	access rights
11/3	access rights
11/4	access rights
11/5	cable rights
11/6	cable rights
11/7	cable rights
11/8	cable rights
12/1	cable rights
12/2	cable rights
12/3	access rights
12/4	cable rights
12/5	access rights
12/6	cable rights
12/7	cable rights
12/8	access rights
12/9	cable rights
12/13	access rights
12/14	access rights
12/15	access rights
12/16	access rights
12/17	access rights
12/18	cable rights
12/19	cable rights
12/20	cable rights
12/21	cable rights
12/22	cable rights
12/23	cable rights
12/24	cable rights
12/25	cable rights
13/1	cable rights
13/2	cable rights
13/3	cable rights
13/4	cable rights
13/5	cable rights
13/6	cable rights
13/7	cable rights
13/8	cable rights
14/1	cable rights
14/2	cable rights
14/3	cable rights
14/4	cable rights
14/5	cable rights
14/6	access rights
14/7	cable rights
14/8	cable rights
14/9	cable rights
14/10	access rights
14/11	access rights
14/12	access rights
14/13	cable rights
14/14	cable rights
14/15	cable rights

14/16	cable rights
14/17	cable rights
14/18	cable rights
14/19	cable rights
14/20	access rights
15/1	access rights
15/2	cable rights
15/3	cable rights
15/4	cable rights
15/5	cable rights
15/6	cable rights
15/8	cable rights
15/9	cable rights
15/10	access rights
15/11	cable rights
15/12	cable rights
15/13	cable rights
15/14	access rights
16/1	access rights
16/2	access rights
16/3	access rights
17/1	cable rights
17/2	cable rights
17/3	cable rights
17/4	cable rights
17/5	cable rights
17/6	cable rights
17/7	cable rights
17/8	cable rights
17/13	access rights
17/14	cable rights
17/15	cable rights
17/16	cable rights
17/17	cable rights
17/18	cable rights
17/19	cable rights

SCHEDULE 90

Article 22

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**62**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "if—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to the Gate Burton Energy Park Order 202[*];

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to the Gate Burton Energy Park Order 202[*]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 20 (compulsory acquisition of land) and as modified by article 27 (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)—

(**62**) 1973 c. 26.

(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 of the 1965 Act (measure of compensation in case of severance) substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(**63**) 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 20 (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)(**64**), 11B (counter-notice requiring possession to be taken on specified date)(**65**), 12 (penalty for unauthorised entry)(**66**) and 13 (refusal to give possession to acquiring authority)(**67**) of the 1965 Act are modified correspondingly.

(6) Section 20 (**68**) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if

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(**63**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**64**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**65**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**66**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Court Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**67**) 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).

(**68**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Gate Burton Energy Park Order 202[*] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Gate Burton Energy Park 202[*] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter notice, or

(c) refer the counter notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense cause by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 101

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot reference number shown on the Land Plans*	*(2)* *Purpose for which temporary possession may be taken*
4/2	Temporary use to facilitate the construction of Work Nos. 1 to 9
12/10	
12/11	
12/12	
17/20	
17/21	
18/1	
18/2	
18/3	
18/4	
15/7	Temporary use to facilitate the construction of Work No. 4

SCHEDULE 112

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Environmental Statement	EN010131/APP/3.1	1	27 January 2023	APP-009 to APP-026
Figures	EN010131/APP/3.2	1	27 January 2023	APP-027 to APP-108
Technical Appendices	EN010131/APP/3.3	1	27 January 2023	APP-109 to APP-182

PART 2

EXAMINATION DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Figure 1-1: Scheme Location	EN010131/APP/3.2	2	20 November 2023	REP5-006
Figure 9-2: Fluvial Flood Risk	EN010131/APP/3.2	3	08 August 2023	REP2-013
Figure 10-21: Vegetation Removal	EN010131/APP/3.2 CR	4	03 October 2023	CR1-003
Environmental Statement Chapter 5 – Environmental Impact Assessment Methodology	EN010131/APP/3.1	2	03 October 2023	REP4-006
Environmental Statement Chapter 8 – Ecology and Nature Conservation	EN010131/APP/3.1	2	03 October 2023	REP4-008
Environmental Statement Chapter 10 –	EN010131/APP/3.1	2	08 August 2023	REP2-010

Landscape and visual amenity				
Environmental Statement Chapter 12 – Socio-Economics and Land Use	EN010131/APP/3.1	2	03 October 2023	REP4-010
Environmental Statement Chapter 13 – Transport and Access	EN010131/APP/3.1	2	03 October 2023	REP4-012
Figure 2-5: Grid Connection Access Locations and Construction Compounds	EN010131/APP/3.2	2	08 August 2023	REP2-012
Figure 10-7: Areas of Great Landscape Value	EN010131/APP/3.2	2	08 August 2023	REP2-014
Figure 10-11: Viewpoint Locations on OS Mapping	EN010131/APP/3.2	2	08 August 2023	REP2-015
Figure 10-12: Viewpoint Locations on Aerial Photography	EN010131/APP/3.2	2	08 August 2023	REP2-016
Figure 13-5: Walking and Cycling Network	EN010131/APP/3.2 CR	2	03 October 2023	CR1-004
Figure 13-7: Public Rights of Way Management (Construction Phase)	EN010131/APP/3.2 CR	2	03 October 2023	CR1-005
Appendix 2-B: Grid Connection Construction Method Statement	EN010131/APP/3.3	2	08 August 2023	REP2-018
Appendix 7-E: Trial Trench Evaluation Fieldwork Report	EN010131/APP/3.3	2	20 November 2023	REP5-011
Appendix 13-E Part 1: Framework Construction Traffic Management Plan	EN010131/APP/3.3	5	21 December 2023	REP6-011
Appendix 13-E Part 2:	EN010131/APP/3.3	5	21 December 2023	REP6-011a

Framework Construction Traffic Management Plan

PART 3

OTHER DOCUMENTS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Archaeological mitigation strategy – Part 1	EN010131/APP/7.6	4	20 November 2023	REP5-027
Archaeological mitigation strategy – Part 2	EN010131/APP/7.6	4	20 November 2023	REP5-029
Book of Reference	EN010131/APP/6.6	5	21 December 2023	
Crown land plans	EN010131/APP/5.7 CR	2	03 October 2023	CR1-015
Framework construction environmental management plan	EN010131/APP/7.3	5	20 November 2023	REP5-023
Framework decommissioning environmental management plan	EN010131/APP/7.5	3	20 November 2023	REP5-025
Framework operational environmental management plan	EN010131/APP/7.4	3	08 August 2023	REP2-035
Land plans	EN010131/APP/5.6 CR	4	03 October 2023	CR1-014
Outline battery safety management plan	EN010131/APP/7.1	1	27 January 2023	APP-222
Outline design principles	EN010131/APP/2.3	7	21 December 2023	
Outline drainage strategy	EN010131/APP/3.3		27 January 2023	APP-139 to APP-141
Outline landscape and ecology management plan	EN010131/APP/7.10	3	20 November 2023	REP5-031
Outline public rights of way management plan	EN010131/APP/7.8 CR	2	03 October 2023	CR1-034
Outline skills, supply chain and employment plan	EN010131/APP/7.7	1	27 January 2023	APP-228

Outline soil management plan	EN010131/APP/7.12 CR	4	03 October 2023	CR1-040
Streets, rights of way and access plans	EN010131/APP/5.3 CR	4	03 October 2023	CR1-010 and CR1-011
Traffic regulation measures plans	EN010131/APP/5.5 CR	5	03 October 2023	CR1-012 and CR1-013
Works plans	EN010131/APP/5.2 CR	4	03 October 2023	CR1-009

SCHEDULE 123

Article 42

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;

(c) any objection it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 134

Article 43

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**69**)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**70**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 16 of this Schedule;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(**69**) 1989 c. 29.
(**70**) 1991 c. 56.

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**71**);

(c) water undertaker within the meaning of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration),

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(**71**) 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)

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), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**72**);

"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.

14. The exercise of the powers of article 31 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(**72**) 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.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

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 DRAINAGE AUTHORITIES

18. The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

19. In this Part of this Schedule—

"authorised development" has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

"construction" includes execution, placing, altering, replacing, relaying and removal, and "construct" and "constructed" must be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse—

(a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or

(b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance constructed for land drainage or flood defence which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

20.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 14 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 9.

(3) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

21. Without limiting the scope of paragraph 20, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

22.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 21, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

23. If by reason of the construction of a specified work or of the failure of any a specified work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

24. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

25.—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

(a) the construction of any specified works comprised within the authorised development; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(8) Nothing in subparagraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

26. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration).

PART 4

FOR THE PROTECTION OF COTTAM SOLAR PROJECT LIMITED

27. The provisions of this Part apply for the protection of Cottam unless otherwise agreed in writing between the undertaker and Cottam.

28. In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by Cottam or its successor in title within the Cottam Work No. 6B Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"Cottam" means an undertaker with the benefit of all or part of the Cottam Solar Order for the time being;

"Cottam Solar Order" means the Cottam Solar Project Order as granted by the Secretary of State following the examination of the project known as Cottam Solar Project and given reference number EN010133 by the Planning Inspectorate;

"Cottam Work No. 6B Area" means the area for Work No. 6B authorised in the Cottam Solar Order;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the Cottam Work No. 6B Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the Cottam Work No. 6B Area;

(b) in, on, under, over or within 25 metres of the Cottam Work No. 6B Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

29. The consent of Cottam under this Part is not required where the Cottam Solar Order has expired without the authorised development having been commenced pursuant to the Cottam Solar Order.

30. Where conditions are included in any consent granted by Cottam pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Cottam.

31. The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Cottam has in respect of any apparatus or has in respect of the Cottam Work No. 6B Area without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

32.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Cottam does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Cottam and must submit such further particulars available to it that Cottam may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Cottam.

(4) Any approval of Cottam required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Cottam Work No. 6B Area or for securing access to such apparatus or the Cottam Work No. 6B Area;

(5) Where Cottam requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Cottam's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

33.—(1) The undertaker must give to Cottam not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Cottam written notice of the completion.

(2) The undertaker is not required to comply with paragraph 32 or sub-paragraph (1) in a case of emergency, but in that case it must give to Cottam notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 32 in so far as is reasonably practicable in the circumstances.

34. The undertaker must at all reasonable times during construction of the specified works allow Cottam and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

35.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Cottam requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Cottam Work No. 6B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Cottam may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

36. If in consequence of the exercise of the powers conferred by 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 Cottam to maintain or use the apparatus no less effectively than was possible before the obstruction.

37. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Cottam to the Cottam Work No. 6B Area.

38. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Cottam Work No. 6B Area request up-to-date written confirmation from Cottam of the location of any apparatus or proposed apparatus.

39. The undertaker and Cottam must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

40. The undertaker must pay to Cottam the reasonable expenses incurred by Cottam in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Cottam Work No. 6B Area.

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Cottam, or Cottam becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by Cottam in making good such damage or restoring the service or supply; and

(b) compensate Cottam for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cottam, by reason or in consequence of any such damage or interruption or Cottam becoming liable to any third party as aforesaid.

(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 Cottam, its officers, servants, contractors or agents.

(3) Cottam must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Cottam must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 41 applies. If requested to do so by the undertaker, Cottam shall provide an explanation of how the

claim has been minimised. The undertaker shall only be liable under this paragraph 41 for claims reasonably incurred by Cottam.

(5) The fact that any work or thing has been executed or done with the consent of Cottam and in accordance with any conditions or restrictions prescribed by Cottam or in accordance with any plans approved by Cottam or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

42. Any dispute arising between the undertaker and Cottam under this Part must be determined by arbitration under article 42 (arbitration).

PART 5

FOR THE PROTECTION OF WEST BURTON SOLAR PROJECT LIMITED

43. The provisions of this Part apply for the protection of West Burton unless otherwise agreed in writing between the undertaker and West Burton.

44. In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by West Burton or its successor in title within the West Burton Work No. 5B Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"West Burton" means an undertaker with the benefit of all or part of the West Burton Solar Order for the time being;

"West Burton Solar Order" means the West Burton Solar Project Order as granted by the Secretary of State following the examination of the project known as West Burton Solar Project and given reference number EN010132 by the Planning Inspectorate;

"West Burton Work No. 5B Area" means the area for Work No. 5B authorised in the West Burton Solar Order;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the West Burton Work No. 5B Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the West Burton Work No. 5B Area;

(b) in, on, under, over or within 25 metres of the West Burton Work No. 5B Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

45. The consent of West Burton under this Part is not required where the West Burton Solar Order has expired without the authorised development having been commenced pursuant to the West Burton Solar Order.

46. Where conditions are included in any consent granted by West Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by West Burton.

47. The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that West Burton has in respect of any apparatus or has in respect of the West Burton Work No. 5B Area without the consent of West Burton, which

must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

48.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if West Burton does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to West Burton and must submit such further particulars available to it that West Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by West Burton.

(4) Any approval of West Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the West Burton Work No. 5B Area or for securing access to such apparatus or the West Burton Work No. 5B Area;

(5) Where West Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to West Burton's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

49.—(1) The undertaker must give to West Burton not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give West Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 48 or sub-paragraph (1) in a case of emergency, but in that case it must give to West Burton notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 48 in so far as is reasonably practicable in the circumstances.

50. The undertaker must at all reasonable times during construction of the specified works allow West Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

51.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from West Burton requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the West Burton Work No. 5B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), West Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

52. If in consequence of the exercise of the powers conferred by 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 West Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

53. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by West Burton to the West Burton Work No. 5B Area.

54. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within West Burton Work No. 5B Area request up-to-date written confirmation from West Burton of the location of any apparatus or proposed apparatus.

55. The undertaker and West Burton must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

56. The undertaker must pay to West Burton the reasonable expenses incurred by West Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the West Burton Work No. 5B Area.

57.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by West Burton, or West Burton becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by West Burton in making good such damage or restoring the service or supply; and

(b) compensate West Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from West Burton, by reason or in consequence of any such damage or interruption or West Burton becoming liable to any third party as aforesaid.

(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 West Burton, its officers, servants, contractors or agents.

(3) West Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) West Burton must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 57 applies. If requested to do so by the undertaker, West Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 57 for claims reasonably incurred by West Burton.

(5) The fact that any work or thing has been executed or done with the consent of West Burton and in accordance with any conditions or restrictions prescribed by West Burton or in accordance with any plans approved by West Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

58. Any dispute arising between the undertaker and West Burton under this Part must be determined by arbitration under article 42 (arbitration).

PART 6

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED AS WATER UNDERTAKER

Application

59. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

60. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water, and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they are taken to have the same meaning

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

61. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

62. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary 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

63. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

64. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

65.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until:

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 66.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water

or its contractors unless these works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to:

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

66.—(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 are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 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 Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

67.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 65(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 59 to 61 and 64 to 66 apply as if the removal of the apparatus had been required by the undertaker under paragraph 65(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable a plan of

those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

68.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

69.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 63 or 65(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water, accompanied by an invoice or claim from Anglian Water, in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

70. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 65(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 67(2), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

71. Where the undertaker identifies any apparatus which they have reason to believe may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

72. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

73. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 7

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

Application

74. 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

75. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989(**73**), 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 Electricity Act 1989;

"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 Gate Burton Energy Park Limited (Company No .12660764) or such other person as has the benefit of the Order.

Precedence of 1991 Act in respect of apparatus in streets

76. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

77. 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.

(**73**) 1989 c. 29. The definition of "electrical 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

78.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a 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 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 and alternative rights for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by the NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land 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 article 42 (arbitration).

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with paragraph 83, 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 83; 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

79.—(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 83.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

80.—(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 78 (removal of apparatus), 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).

(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 must comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub–paragraph (2) and in consequence of the 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 78(2) (removal of apparatus).

(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

81.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub–paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the authorised development; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

82.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

(a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and

(b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, claims, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of the undertaker's failure to undertake works to deliver any alternative apparatus.

Expert Determination

83.—(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 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) NGED's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).

PART 8

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

84. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

85. In this Part of this Schedule—

"Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"plans" includes sections, drawings, specifications, calculations and method statements;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within;

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(b) 16 metres of a drainage work involving a tidal main river or 8 metres of a drainage work involving a non-tidal main river; or

(c) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves:

(d) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(e) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

Submission and approval of plans

86. —(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 96.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

87. Without limiting paragraph 86, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

88.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 87, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of this Schedule

89.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph (1).

Maintenance of works

90.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and

any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 96.

(6) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

91. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

92. If by reason of construction of the specified work the Agency's access to 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 Agency to maintain the 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.

Free passage of fish

93.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

94. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

95.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads; and

(c) legal costs;

"losses" includes physical damage;

"claims" and "demands" include as applicable—

(a) costs (within the meaning of this sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded; and

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

96. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for the department of Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 9

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

97.—(1) For the protection of National Grid 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.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 107(3)(b)).

Interpretation

98. 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

(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 to cover the undertaker's liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of 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);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989(**74**), belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) 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 has the same meaning as in article 2 of this Order;

"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 (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, is to require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

(**74**) 1989 c.29.

"maintain" and "maintenance" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission Plc (Company No. 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 acting reasonably;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 103 or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 103 or otherwise; 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."

(d) "Transmission Owner" means as defined in the STC; and

(e) "undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

99. Except for paragraphs 100 (apparatus of National Grid in streets subject to temporary stopping up), 105 (retained apparatus: protection of National Grid as electricity undertaker), 106 (expenses) and 107 (indemnity) which must apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets and public rights of way

100.—(1) Where any street or public right of way is stopped up under article 11 (temporary stopping up of streets and public rights of way), if National Grid has any apparatus in the street or public right of way or accessed via that street or public right of way National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or public right of way but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 103 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 105.

(2) Notwithstanding the temporary stopping up or diversion of a street or public right of way under the powers of article 11 (temporary stopping up of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street or public right of way.

Protective works to buildings

101. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

102.—(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 belonging to National Grid or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid, otherwise than by agreement (such agreement not to be unreasonably withheld).

(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 development (or in such other timeframe as may be agreed between National Grid 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 or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 105 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

103.—(1) If, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in or possesses temporarily any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-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 National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 104 below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

104.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 111 (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 as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection of National Grid as Electricity Undertaker

105.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to the specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (4) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 103(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 any specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

106.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 103(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 111 (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 by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

107.—(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 development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed in writing between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) is to impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the

undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph 107(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 107; or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

108. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

109.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 103(2) or National Grid makes requirements for the protection or alteration of

apparatus under paragraph 105, the undertaker is to use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid is to use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

110. If in consequence of the agreement reached in accordance with paragraph 102 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

111. Save for differences or disputes arising under paragraphs 103(2), 103(4), 104 and 105 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

112. Notwithstanding article 4 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 105 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

113. 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 127 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

114. 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(**75**);

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes,

(**75**) 1993 c. 43.

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(**76**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

115.—(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.

116.(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (Development consent etc. granted by this Order);

(b) article 5 (Power to maintain the authorised development);

(c) article 16 (Discharge of water);

(d) article 19 (Authority to survey and investigate the land);

(**76**) 2006 c. 46.

(e) article 20 (Compulsory acquisition of land);

(f) article 22 (Compulsory acquisition of rights);

(g) article 23 (Private rights);

(h) article 25 (Acquisition of subsoil only);

(i) article 26 (Power to override easements and other rights);

(j) article 29 (Temporary use of land for carrying out the authorised development);

(k) article 30 (Temporary use of land for maintaining the authorised development);

(l) article 31 (Statutory undertakers);

(m) article 35 (Consent to transfer the benefit of the Order);

(n) article 38 (Felling or lopping of trees and removal of hedgerows);

(o) article 39 (Trees subject to tree preservation orders);

(p) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(s) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 31 (Statutory undertakers), article 25 (power to override easements and other rights) or article 23 (Private rights) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

117.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

118.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 117(4), must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 117;

(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.

119. 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.

120. 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.

121.—(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 117(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 122(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

122. 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 117(3) or in constructing any protective works under the provisions of paragraph 117(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

123.—(1) In this paragraph—

"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 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 117(1) 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 117(1) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 117(1) 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 to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 118.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 127 applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (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 122(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

124. 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.

125. 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.

126. 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.

127.—(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 41 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be

followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in 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.

128. 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 127) 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).

129. 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.

130. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

131. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

132. 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 35 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

133. 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 40 (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.

134. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 42 (arbitration) and the Rules at Schedule 13 (arbitration rules).

PART 11

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

Interpretation

135.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2023) or any updates or amendments thereto;

"construction", in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work; and "construct" and "constructed" have corresponding meanings;

"Canal & River Trust's network" means the Canal & River Trust's network of waterways;

"detriment" means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River Trust's network;

"the engineer" means an engineer appointed by the Canal & River Trust for the purpose in question;

"plans" includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph 139 below, (approval of plans etc.), sub-paragraph 139(4)(a);

"specified work" means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Trust, including any projection over the waterway by any authorised work or any plant or machinery;

"the waterway" means each and every part of the River Trent within the order limits and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal & River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal & River Trust's consent

136.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 16 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 19 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 20 (compulsory acquisition of land), article 22 (compulsory acquisition of rights), article 25 (acquisition of

subsoil) or article 31 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) to this Order.

Fencing

137. Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

138.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the riverbed ("the survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey, to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

Approval of plans, protective works etc.

139.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 14 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph 139 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been

given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph 139 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

140. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

(a) the design of the specified works;

(b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

(c) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant

to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway.

Notice of works

141. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

Construction of specified works

142.—(1) Any specified works or protective works must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 139 (approval of plans etc) and paragraph 140 (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 16 (discharge of water); and

(f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 138 (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of pollution

143. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

144.—(1) The undertaker on being given reasonable notice must—

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

145.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

Repayment of the Canal & River Trust's fees, etc.

146.—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph 139 (approval of plans etc) sub-paragraph 139(4)(a);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 14 working days—

(a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal & River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 146 and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 146, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

147.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

(a) by reason of the construction of a specified work or a protective work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 147 applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

Arbitration

148. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 42 (arbitration) of this Order.

Capitalised sums

149.—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

As built drawings

150. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

Decommissioning

151. Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 11 of Schedule 14 will, so far as appropriate, apply to those activities as if they were a specified work.

PART 12

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

152.—(1) For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

(2) In this Part of this Schedule, the following terms have the following meanings:

"Additional Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

"Alternative Apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously;

"Alternative Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

"Apparatus" means the pipeline and storage system and any ancillary apparatus owned or operated by Exolum and includes:

(a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;

(c) such legal interest, and benefit of property rights and covenants as are vested in respect of these items;

and, where the context requires, includes Alternative Apparatus.

"Exolum" means Exolum Pipeline System Ltd (company registration number 09497223 whose registered office is 1st Floor 55 King William Street, London, England, EC4R 9AD) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

"functions" includes powers, duties and commercial undertaking.

"in" in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

"Plan" includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the Restricted Works to be executed properly and sufficiently and in particular must describe:

(a) the position of the works as proposed to be constructed or renewed;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker that may also be affected by the Restrictive Works;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic.

"Premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

"Protective Works" means works for the inspection and protection of Apparatus.

"Restricted Works" means any works that are near to, or will or may affect any Apparatus or Premises including:

(a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus;

(b) the crossing of Apparatus by other utilities;

(c) the use of explosives within 400 metres of any Apparatus;

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus, and

(e) all works that impose a load directly upon the Apparatus, wherever situated

whether carried out by the Promoter or any third party in connection with the Authorised Development.

"Working Day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

153.—(1) Regardless of any other provision in the Order or anything shown on the land plans:

(a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum's rights in respect of Apparatus or any of Exolum's interests in the Order land;

(b) where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

(c) the undertaker must not, otherwise than in accordance with this Part of this Schedule:

(i) obstruct or render less convenient the access to any Apparatus;

(ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;

(iii) require that Apparatus is relocated or diverted; or

(iv) remove or required to be removed any Apparatus;

(d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus must not be extinguished by the undertaker until any necessary Alternative Apparatus has been constructed and it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and

(e) any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

(2) Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if considered necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and the undertaker will use reasonable endeavours to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.

(3) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 154(4) do not apply, the undertaker must;

(a) retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land;

(b) (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with an application to register title to the Promoter's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and

(c) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

(4) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus:

(a) where reasonably necessary, Exolum may exercise its rights to access such land;

(i) in an emergency, without notice; and

(ii) in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and

(b) the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

154.—(1) If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:

(a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus;

then the relevant party must give written notice of that requirement to the other.

(2) The parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraph 155.

(4) Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph (4), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) The following sub-paragraphs (7) and (8) only apply if:

(a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant Apparatus; and

(b) the undertaker has served notice on Exolum specifying the default; and

(c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in sub-paragraph (6), if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in sub-paragraph (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any Apparatus, or execute any filling around the Apparatus (where the Apparatus is laid in a trench) within 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

155.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum and must be materially no less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Exolum, in accordance with this Schedule or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative Rights must be granted before any Alternative Apparatus is brought into use.

(3) The parties agree that the undertaker must use reasonable endeavours to procure the grant of the Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties

acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.

(4) Nothing in this Schedule or contained in the Alternative Rights require Exolum to divert or remove any Alternative Apparatus.

(5) If the facilities and rights to be afforded by the undertaker in respect of any Alternative Apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of Exolum less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, Exolum may refer the matter to arbitration in accordance with article 42 (arbitration).

Retained Apparatus and Alternative Apparatus: protection

156.—(1) Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No Restricted Works are to be commenced until the Plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum in writing (acting reasonably) and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with sub-paragraph (3) by Exolum.

(3) Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for:

(a) the continuing safety and operational viability of any Apparatus;

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and

(c) the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works to ensure the continuing safety and operational viability of any Apparatus and ensure compliance with the agreed Plan;

providing such reasonable requirements will be notified to the undertaker in writing.

(4) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

(5) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 154 apply, then the parties must follow the procedure in paragraph 154 onwards.

(6) Nothing in sub-paragraphs (1) to (5) precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties must re-run the procedure from sub-paragraph (1) onwards.

(7) Where Exolum reasonably requires Protective Works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

(8) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraph 155.

(9) Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such line or situation as may be

agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(10) After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 154(3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

Cathodic protection testing

157.—(1) Where in the reasonable opinion of Exolum or the undertaker;

(a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or

(b) any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

(2) The Parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

Expenses

158.—(1) Subject to the following provisions of this paragraph 158, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with:

(a) undertaking its obligations under this Schedule including;

(i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and Protective Works;

(ii) the execution of any other works under this Schedule; and

(iii) the review and assessment of Plans;

(b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and

(c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 156(3);

together with any administrative costs properly and reasonably incurred by Exolum.

(2) There will be no deduction from any sum payable under sub-paragraph (1) as a result of;

(i) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;

(ii) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or

(iii) the scrap value (if any) of any Apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker shall pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Exolum shall within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

Damage to property and other losses

159.—(1) Subject to sub-paragraphs (2) to (7), the undertaker shall:

(a) indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of:

(i) the carrying out of works under this Schedule;

(ii) the carrying out of the Authorised Development;

(iii) the use or occupation of land over or in the vicinity of any Apparatus or in the vicinity of any Premises in connection with the carrying out of the Authorised Development;

(iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

(v) any matters arising out of or in connection with this Order;

(b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises for the purposes of carrying out any activity authorised by this Order;

(c) pay to Exolum, in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development; and

(d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

(2) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(3) The fact that any act or thing may have been done by Exolum on behalf of the Promoter or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.

(5) The undertaker and Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.

(6) The undertaker warrants that it will use reasonable endeavours to ensure:

(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(7) Exolum must give the undertaker reasonable notice of any such claim or demand to which sub-paragraph (2) applies.

Insurance

160.—(1) The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

(2) The undertaker shall maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

Co-operation and reasonableness

161.—(1) Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule:

(a) in the interests of safety;

(b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and

(c) taking into account the need to ensure the safe and efficient operation of the Apparatus and carrying out of Exolum's functions.

(2) Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1).

(3) The undertaker and Exolum will act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

162.—(1) The Promoter acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.

(2) In the following circumstances, Exolum may on written notice to the Promoter immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum shall not be in breach of its obligations under this Schedule:

(a) circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or

(d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or

(e) any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the Promoter incurs as a result of the suspension of any activities under paragraphs to or delays caused by it.

Dispute Resolution

163.—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part of this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum must each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then, unless otherwise agreed in writing between the undertaker and Exolum, the dispute or difference will be determined by arbitration in accordance with article 42 (arbitration).

Miscellaneous

164. No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

PART 13

FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE

Interpretation

165.—(1) For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

(2) In this Part of this Schedule—

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

"Lincolnshire Fire and Rescue" means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

166.—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Lincolnshire Fire and Rescue for the purposes of

providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No.2.

Costs

167.—(1) Pursuant to the provisions set out at paragraph 166, the undertaker must pay to Lincolnshire Fire and Rescue:

(i) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 166(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and

(ii) £1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 166(2).

(2) The costs payable under sub-paragraph 167(1)(ii) are to be Index Linked.

Arbitration

168. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 42 (arbitration).

[PART 14

FOR THE PROTECTION OF TILLBRIDGE SOLAR LIMITED

169. The provisions of this Part apply for the protection of Tillbridge unless otherwise agreed in writing between the undertaker and Tillbridge.

170. In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by Tillbridge or its successor in title within the Tillbridge Work No. [XX] Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the Tillbridge Work No. [XX] Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the Tillbridge Work No. [XX] Area;

(b) in, on, under, over or within 25 metres of the Tillbridge Work No. [XX] Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

"Tillbridge" means an undertaker with the benefit of all or part of the Tillbridge Solar Order for the time being;

"Tillbridge Solar Order" means the Tillbridge Solar Project Order as granted by the Secretary of State following the examination of the project known as Tillbridge Solar Project and given reference number EN010142 by the Planning Inspectorate;

"Tillbridge Work No. [XX] Area" means the area for Work No. [XX] authorised in the Tillbridge Solar Order.

171. The consent of Tillbridge under this Part is not required where the Tillbridge Solar Order has expired without the authorised development having been commenced pursuant to the Tillbridge Solar Order.

172. Where conditions are included in any consent granted by Tillbridge pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Tillbridge.

173. The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Tillbridge has in respect of any apparatus or has in respect of the Tillbridge Work No. [XX] Area without the consent of Tillbridge, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

174.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Tillbridge, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Tillbridge does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to paragraph 174(1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Tillbridge and must submit such further particulars available to it that Tillbridge may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Tillbridge.

(4) Any approval of Tillbridge required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Tillbridge Work No. [XX] Area or for securing access to such apparatus or the proposed Tillbridge Work No. [XX] Area;

(5) Where Tillbridge requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Tillbridge's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

175.—(1) The undertaker must give to Tillbridge not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Tillbridge written notice of the completion.

(2) The undertaker is not required to comply with paragraph 174 or sub-paragraph (1) in a case of emergency, but in that case it must give to Tillbridge notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 174 in so far as is reasonably practicable in the circumstances.

176. The undertaker must at all reasonable times during construction of the specified works allow Tillbridge and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

177.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Tillbridge requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Tillbridge Work No. [XX] Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Tillbridge may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

178. If in consequence of the exercise of the powers conferred by 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 Tillbridge to maintain or use the apparatus no less effectively than was possible before the obstruction.

179. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Tillbridge to the Tillbridge Work No. [XX] Area.

180. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Tillbridge Work No. [XX] Area request up-to-date written confirmation from Tillbridge of the location of any apparatus or proposed apparatus.

181. The undertaker and Tillbridge must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

182. The undertaker must pay to Tillbridge the reasonable expenses incurred by Tillbridge in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Tillbridge Work No. [XX] Area.

183.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Tillbridge, or Tillbridge becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by Tillbridge in making good such damage or restoring the service or supply; and

(b) compensate Tillbridge for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Tillbridge, by reason or in consequence of any such damage or interruption or Tillbridge becoming liable to any third party as aforesaid.

(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 Tillbridge, its officers, servants, contractors or agents.

(3) Tillbridge must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Tillbridge must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 183 applies. If requested to do so by the undertaker, Tillbridge shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 183 for claims reasonably incurred by Tillbridge.

(5) The fact that any work or thing has been executed or done with the consent of Tillbridge and in accordance with any conditions or restrictions prescribed by Tillbridge or in accordance with any plans approved by Tillbridge or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

184. Any dispute arising between the undertaker and Tillbridge under this Part must be determined by arbitration under article 42 (arbitration).]

PART 15

FOR THE PROTECTION OF EDF ENERGY (THERMAL GENERATION) LIMITED

Application

185.—(1) For the protection of EDF as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EDF.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and EDF, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between EDF and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to EDF 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 EDF (but without prejudice to 195(3)(b)).

Interpretation

186. 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 development; and (b) after the construction period of the authorised development 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 EDF; 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:

(c) a parent company guarantee from a parent company in favour of EDF to cover the undertaker's liability to EDF to a total liability cap of £50,000,000.00 (fifty million pounds) (granted by an entity and in a form reasonably satisfactory to EDF and where required by EDF, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(d) a bank bond or letter of credit from an acceptable credit provider in favour of EDF to cover the undertaker's liability to EDF 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 EDF);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of EDF to enable EDF to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, or other apparatus as defined in article 2 of this Order, belonging to or maintained by EDF together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of EDF 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 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, maintenance and decommissioning of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 of this Order, except in this Part of this Schedule it includes 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;

"EDF" means EDF Energy (Thermal Generation) Limited (Company Number 04267569) whose registered office is at 90 Whitfield Street, London, England, W1T 4EZ or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by EDF (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, is to require the undertaker to submit for EDF'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" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of EDF: construct, use, repair, alter, inspect, renew or remove (including decommission) the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by EDF acting reasonably;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, or within 20 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 191(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 191(2) or otherwise;

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

187. Except for paragraphs 188 (apparatus of EDF in stopped up streets), 193 (retained apparatus: protection), 194 (expenses) and 195 (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 EDF, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and EDF are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of EDF in stopped up streets

188.—(1) Where any street or public right of way is stopped up under article 11 (temporary stopping up of streets and public rights of way), if EDF has any apparatus in the street or public right of way or accessed via that street or public right of way EDF has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to EDF, or procure the granting to EDF of, legal easements reasonably satisfactory to EDF in respect of such apparatus and access to it prior to the stopping up of any such street or public right of way but nothing in this paragraph affects any right of the undertaker or EDF to require the removal of that apparatus under paragraph 191 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 193.

(2) Notwithstanding the temporary stopping up or diversion of any street or public right of way under the powers of article 11 (temporary stopping up of streets and public rights of way), EDF is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such 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 street or public right of way.

Protective works to buildings

189. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of EDF.

Acquisition of land

190.—(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 or entry to any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right of apparatus of EDF 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 development (or in such other timeframe as may be agreed between EDF 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 EDF or affect the provisions of any enactment or agreement regulating the relations between EDF and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as EDF reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between EDF and

the undertaker acting reasonably and which must be no less favourable on the whole to EDF unless otherwise agreed by EDF, and it will be the responsibility of the undertaker to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Save where otherwise agreed in writing between EDF and the undertaker, the undertaker and EDF 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 EDF or other enactments relied upon by EDF as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) As a condition of an agreement between the parties in sub-paragraph (1) which relates to taking temporary access rights during construction over EDF's land, EDF may ensure that it retains flexibility to alter any construction routes (within the Order limits) or to limit access for certain time periods, and may require the undertaker to pay any security and maintenance costs involved in the grant of any such rights.

(5) Any agreement or consent granted by EDF under paragraph 193 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

191.—(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 EDF 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 EDF 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 EDF 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 EDF 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 EDF to its satisfaction (taking into account paragraph 192(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, operation and decommissioning 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, EDF 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 does not extend to the requirement for EDF 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 EDF and the undertaker.

(5) EDF 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 EDF 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

192.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for EDF 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 EDF and must be no less favourable on the whole to EDF than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by EDF.

(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 EDF 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 199 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to EDF as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

193.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to EDF a plan of the works to be executed and seek from EDF details of the underground extent of their assets.

(2) In relation to specified works the plan to be submitted to EDF under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until EDF has given written approval of the plan so submitted.

(4) Any approval of EDF required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, EDF may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (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 EDF and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by EDF

for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EDF will be entitled to watch and inspect the execution of those works.

(7) Where EDF 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 EDF's satisfaction prior to the commencement of any specified works for which protective works are required and EDF 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 EDF 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 185 to 187 and 190 to 192 apply as if the removal of the apparatus had been required by the undertaker under paragraph 191(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 authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(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 EDF notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order, the undertaker must comply with EDF's HSEQ Requirement for Contractors (document reference DD STND HAS 001 and any document that replaces or supersedes it).

Expenses

194.—(1) Save where otherwise agreed in writing between EDF and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to EDF within 30 days of receipt of an itemised invoice or claim from EDF all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by EDF 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 incurred by or compensation properly paid by EDF in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by EDF as a consequence of EDF—

  (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 191(3); or

  (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting EDF;

(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 199 (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 EDF 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 EDF 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 EDF 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

195.—(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 development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 development) or property of EDF, or there is any interruption in any service provided, or in the supply of any goods, by EDF, or EDF 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 EDF the cost reasonably and properly incurred by EDF in making good such damage or restoring the supply; and

(b) indemnify EDF for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EDF, by reason or in consequence of any such damage or interruption or EDF becoming liable to any third party other than arising from any default of EDF.

(2) The fact that any act or thing may have been done by EDF on behalf of the undertaker or in accordance with a plan approved by EDF or in accordance with any requirement of EDF 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 EDF 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) is to 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 EDF, its officers, servants, contractors or agents; or

(b) any authorised development or any other works authorised by this Part of this Schedule carried out by EDF as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph 195(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 195; or

(c) any 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) EDF 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) EDF 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) EDF 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 EDF'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 EDF's control and if reasonably requested to do so by the undertaker EDF 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 development on any land owned by EDF or in respect of which EDF has an easement or wayleave for its apparatus or any other interest or to carry out any works within 20 metres of EDF's apparatus until the following conditions are satisfied:

(a) unless and until EDF 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 development from the proposed date of commencement of construction of the authorised development) and EDF has confirmed the same to the undertaker in writing; and

(b) unless and until EDF is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to EDF that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and EDF has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent EDF from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

196. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between EDF 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 EDF 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

197.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EDF requires the removal of apparatus under paragraph 191(2) or EDF makes requirements for the protection or alteration of apparatus under paragraph 193, 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 development and taking into account the need to ensure the safe and efficient operation of EDF's undertaking and EDF shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EDF'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

198. If in consequence of the agreement reached in accordance with paragraph 190(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 EDF to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

199. Save for differences or disputes arising under paragraph 191(2), 191(4), 192(1) and 193 any difference or dispute arising between the undertaker and EDF under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EDF, be determined by arbitration in accordance with article 42 (arbitration).

Notices

200. Notwithstanding article 4 (service of notices), any plans submitted to EDF by the undertaker pursuant to paragraph 193 must be submitted to EDF addressed to the company secretary and copied to the land and estates team and sent to 90 Whitfield Street, London, England, W1T 4EZ or to such other address as EDF may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 16

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

201. For the protection of Northern Powergrid (Yorkshire) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

202. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means apparatus (as defined in article 2 (interpretation) of the Order), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to Northern Powergrid to such 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;

"Order" means the Gate Burton Energy Park Order 202[*];

"Order limits" means as defined in article 2 (interpretation) of this Order;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and must include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on the apparatus or Northern Powergrid's undertaking within the Order limits; and

"Northern Powergrid" means Northern Powergrid (Yorkshire) Plc (Company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

203. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

204. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of streets and public rights of way), the undertaker must not prevent Northern Powergrid from taking all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

205. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or any other interest of Northern Powergrid, override any easement or other interest of Northern Powergrid, or create any new rights over that apparatus otherwise than by agreement (such agreement not to be unreasonably withheld or delayed, having regard to Northern Powergrid's existing and known future requirements for such land or interests).

206. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interest supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed).

207.—(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 Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement or other form of written agreement in a form reasonably acceptable to NPG for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 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 the Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed:

(i) the undertaker must in the first instance use reasonable endeavours to acquire through voluntary negotiations all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure through voluntary negotiations all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(ii) In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (i) Northern Powergrid must on receipt of a written notice to that effect from the undertaker and subject to paragraph 210, as soon as reasonably practicable use reasonable endeavours to procure the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration) of the Order.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

208.—(1) Where in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

209.—(1) Not less than twenty-eight working days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under the 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 207(2), the undertaker must submit to Northern Powergrid a

plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of twenty-eight days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) apply as if the removal of the apparatus had been required by the undertaker under paragraph 207(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than fourteen working days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid 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.

210.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty days of receipt of an itemised invoice or claim the reasonable expenses incurred by Northern Powergrid in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 207(2) and 207(3) including within limitation:

(i) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(ii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iii) the approval of any plans which must include the review of any such plans and assessing and preparing a design for apparatus to address and accommodate the proposals of the undertaker where necessary pursuant to paragraph 209(4).

(iv) the carrying out of protective works, plus a capitalised sum to cover the reasonable cost of adequately maintaining permanent protective works;

(v) 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) Where any payment falls due pursuant to sub-paragraph (1), Northern Powergrid must:

(a) provide an itemised invoice or reasonable expenses claim to the undertaker;

(b) provide ‘reminder letters’ to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker:

(i) 15 days (‘reminder letter 1’)

(ii) 29 days (‘reminder letter 2’)

(iii) 43 days (‘reminder letter 3’)

(c) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days of receipt of the same where payment has not been made.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) of this Order 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 would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess, save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth.

(4) For the purposes of sub-paragraph (4)—

(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 207(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

211.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the works referred to in paragraph 207(2) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for other reasonable expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Northern Powergrid, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents; or

(b) any authorised development and/or other works authorised by this Part of this Schedule carried out by Northern Powergrid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any works yet to be executed by the

undertaker and not falling within this paragraph will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 211 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 211 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Northern Powergrid.

212. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

213. Any difference under the provisions of this Part of this Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with article 42 (arbitration).

214. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 207 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 209, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's apparatus taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to cooperate with each other for these purposes.

215. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify the undertaker in writing.

216. Prior to carrying out any works within the Order limits, Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

217. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are:

(a) within 15m of any above ground apparatus or

(b) within 15m of any apparatus and are to a depth of between 0 to 4m below ground level.

SCHEDULE 145

Article 5

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement;

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(b); and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker will also submit a copy of that application to any requirement consultee.

(2) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(3) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (2), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Any application made to the relevant planning authority pursuant to sub-paragraph (2) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(5) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (2) and is accompanied by a report pursuant to sub-paragraph (4) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

4.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(5);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);

(e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

5.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**77**) (as may be amended or replaced from time to time) is to apply for the discharge of each requirement (whether dealt with in

(**77**) S.I. amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643. S.I. 2017/1314 and S.I. 2019/1154.

separate applications or combined within a single application) and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 2(2) or paragraph 2(3) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(2) or 2(3) of this Schedule, as applicable.

SCHEDULE 156

Article 38

HEDGEROWS TO BE REMOVED

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*	*(3)* *Purpose of removal*
West Lindsey District Council	Removal of part of the hedgerow, along the southern side of Kexby Lane/B1241 within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 2 of 14), reference R1	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 1 of 14), reference R2	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, along the northern side of the proposed BESS, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 3 and 4 of 14), reference R3	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow on the eastern verge of the proposed A156 access point within the Order limits, as shown approximately within the area identified by purple shading on the vegetation removal plan (Sheet 3 of 14), reference R4	To facilitate construction of the authorised development
West Lindsey District Council	Removal of a number of small sections of hedgerow within the Order limits, as shown approximately within the area identified by purple circular shading on Sheets 1 to 8 of the vegetation removal plan	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan	To facilitate construction of the authorised development

	(Sheet 9 of 14), reference R5	
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 9 of 14), reference R6	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 9 of 14), reference R7	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 9 and 10 of 14), reference R8	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 9 and 10 of 14), reference R9	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 9 and 10 of 14), reference R10	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 9 and 10 of 14), reference R11	To facilitate construction of the authorised development
West Lindsey District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 10 of 14), reference R12	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within Order limits,	To facilitate construction of the authorised development

	as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R13	
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R14	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R15	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R16	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R17	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 11 of 14), reference R18	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 11 and 12 of 14), reference R19	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately	To facilitate construction of the authorised development

	within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 11 and 12 of 14), reference R20	
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 12 of 14), reference R21	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 12 of 14), reference R22	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 12 of 14), reference R23	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 12 and 13 of 14), reference R24	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 12 and 13 of 14), reference R25	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 12 and 13 of 14), reference R26	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by	To facilitate construction of the authorised development

	purple rectangular shading on the vegetation removal plan (Sheet 14 of 14), reference R27	
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 13 and 14 of 14), reference R28	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheets 13 and 14 of 14), reference R29	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 14 of 14), reference R30	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 14 of 14), reference R31	To facilitate construction of the authorised development
Bassetlaw District Council	Removal of part of the hedgerow within the Order limits, as shown approximately within the area identified by purple rectangular shading on the vegetation removal plan (Sheet 14 of 14), reference R32	To facilitate construction of the authorised development

SCHEDULE 167

Article 39

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Type of tree*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised development*	*(4)* *TPO reference*
Individual TPO – Species: Oak	Potential felling or lopping of trees or works to trees to permit the construction of the authorised development.	Work No. 8	TPO 1112 – Field OS 123, Adj. A156, Knaith. West Lindsey District Council.
Individual TPO – Species: Ash	Potential felling or lopping of trees or works to trees to permit the construction of the authorised development.	Work No. 4b	TPO 659 – Field OS 161 & OS 171, Marton. West Lindsey District Council.
Individual TPO – Species: Ash	Potential felling or lopping of trees or works to trees to permit the construction of the authorised development.	Work No. 5	TPO 665 – Field OS 7 & OS 39, Brampton. West Lindsey District Council.
Individual TPO – Species: Willow	Potential felling or lopping of trees or works to trees to permit the construction of the authorised development.	Work No. 4b	TPO 664 – Field OS 3, Brampton. West Lindsey District Council.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Gate Burton Energy Park Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 40 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL.