



SUNNICA ENERGY FARM

EN010106

8.100 Written Summary of Applicant's Oral Submissions at the
Issue Specific Hearing on Environmental Matters on 16 and 17
February 2023

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



3 March 2023

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1 Introductory remarks

1.1 Introduction

- 1.1.0 The Issue Specific Hearing (ISH) on Environmental Matters was held on 16 and 17 February 2023 as a blended event at King Edward VII Memorial Hall, High Street, Newmarket CB8 8JP and by virtual means using Microsoft Teams.
- 1.1.1 The Hearing took the form of running through the items listed in the detailed agenda published by the Examining Authority (ExA) on 7 February 2023 (Agenda). The discussion on environmental matters predominantly focused on:
- the landscape and visual impacts of the Scheme, potential for mitigation and impact of mitigation proposals;
 - the impact of the Scheme on the historic environment and the Applicant's proposals to manage impacts;
 - the in-combination impacts of the Scheme on certain land parcels in terms of ecology and biodiversity, historic environment, and landscape and visual;
 - the management of potential traffic and transport impacts associated with construction of the Scheme; and
 - the draft Development Consent Order (DCO) for the Scheme and related matters.

2 Agenda Item 1 – Welcome, introductions and arrangements for the Hearing

2.1 The Examining Authority

- 2.1.0 Grahame Kean, Guy Rigby and Karin Taylor.

2.2 The Applicant

- 2.2.0 **SPEAKING ON BEHALF OF THE APPLICANT:** Richard Turney (Barrister at Landmark Chambers) and Nicholas Grant (Barrister at Landmark Chambers).
- 2.2.1 Present for the Applicant: Luke Murray (Director at Sunnica Limited), Nigel Chalmers (Technical Director at AECOM Limited), Professor Max Wade (Technical Director at AECOM Limited), Jon Rooney (Associate Director at ARUP Limited), Neil McNab (Technical Director at AECOM), Andy Mayes (Associate Director at AECOM Limited), and Chris Carter (Regional Director at AECOM Limited).
- 2.2.2 The Applicant's legal advisors: Richard Griffiths, Tom Edwards, Jonathan Leary, Matthew Fox, Tom Atkins and Olivia Henshall all of Pinsent Masons LLP.

2.3 Host Authorities

- 2.3.0 Suffolk County Council (SCC): Michael Bedford KC (of Cornerstone Chambers), Isolde Cutting (Senior Landscape Officer) and Julia Cox (Senior Transport Engineer).
- 2.3.1 Cambridgeshire County Council (CCC) and East Cambridgeshire District Council (ECDC): Hashi Mohamed (of No. 5 Chambers), Isolde Cutting (Senior Landscape

Officer), Camilla Rhodes (Senior Transport Engineer), and Deborah Ahmed (Ecology Officer).

2.3.2 West Suffolk District Council (WSDC): Ruchi Parekh (of Cornerstone Chambers), Jackie Fisher (Senior Landscape Officer), David Baten (Principal Planning Officer), and Claire Oliver (Planning Officer).

2.3.3 Isleham Parish Council (IPC): Richard Liddington.

2.3.4 Worlington Parish Council (WPC): Lesley Osborne.

2.4 Interested parties

2.4.0 Say No To Sunnica Action Group Limited (SNTS) and Newmarket Horseman's Group (NHG): John Steel KC and Daniel Kozelko (of 39 Essex Chambers), Richard Hogget (Heritage) and John Jeffcock (Landscape and Visual).

2.5 Arrangements for Hearing & other preliminary matters

2.5.0 The ExA noted that the Applicant's Change Request of 13 January 2023 has been accepted by way of procedural decision dated 25 January 2023.

2.5.1 The ExA also stated that they had given due regard to all material submitted at Deadline 5 and Deadline 6, as well as the additional material submitted by the Applicant following Deadline 6.

3 Agenda Item 2 – Landscape and visual impact

3.1 Update from the Applicant on specific impacts on visual amenity around parcels E19, E20, E21 and E22 (south of Elms Road) and potential for mitigation

3.1.1 The ExA noted that discussion on visual impacts on parcels E19, E20, E21 and E22 was included on the agenda for ISH 2 (7 December 2022), relating to issues that had arisen during the Accompanied Site Inspection (ASI) on 3 November 2022. The ExA asked if the Applicant could clarify whether any further consideration had been given to these land parcels in relation to visual mitigation.

3.1.2 Mr Richard Turney on behalf of the Applicant noted that an updated Environmental Masterplan **[REP5-054]** was submitted at Deadline 5 showing additional changes to the proposed mitigation for these parcels.

3.1.3 Mr Jon Rooney on behalf of the Applicant went on to explain that, following the ASI in November 2022, there have been two meetings between the Applicant and the Local Authorities on this matter, and that there has been a particular focus on Elms Road in terms of proposed mitigation. These parcels are predominately divided by tree belts and shrubs and are bordered by existing hedgerows except for the eastern side of E20, which borders the travellers' site. Mr Rooney stated that the Applicant has reviewed the mitigation proposed for this particular area, and is now proposing to strengthen the vegetation belts and increase the width of planting along the eastern edge of E20. The Applicant has committed to extending the width of the planting to 15m, with the density of the planting being between 1.2m and

1.8m between rows. This density of planting will enhance visual screening for the travellers' site.

- 3.1.4 The ExA asked Mr Rooney to describe what was being proposed in terms of mitigation for the other side of the parcels that face Brookside Farm.
- 3.1.5 Mr Rooney noted that there is already an existing hedgerow separating parcel E19 from Brookside Farm, which the Applicant is proposing to reinforce with additional belts, trees and shrubs to a width of 25m. This proposed mitigation will also accommodate the proposed permitted path that runs along the western boundary.
- 3.1.6 The ExA then asked the Local Authorities whether they wished to comment on the Applicant's additional mitigation proposals.
- 3.1.7 Mr Michael Bedford KC on behalf of SCC acknowledged the useful dialogue that had taken place to date between the Applicant and the Local Authorities on landscape matters, and that there has been some positive movement in terms of further improvements to mitigation, but these have not yet been translated into the draft DCO and associated materials. The matters discussed and agreed between the parties will be included in the updated Environmental Masterplan and Outline Landscape and Ecology Management Plan (OLEMP) submitted at Deadline 7.
- 3.1.8 Mr Bedford KC noted SCC's view that while the proposed mitigation is not yet considered robust enough, sufficient mitigation is achievable for these parcels. Ms Isolde Cutting provided further detail on the additional mitigation measures SCC considers necessary to address effects on neighbouring properties.
- 3.1.9 The ExA sought clarification from Mr Rooney as to whether the further mitigation proposals he outlined are those that are contained in the updated Environmental Masterplan submitted at Deadline 5 or if they are additional.
- 3.1.10 Mr Rooney explained that the mitigation proposals outlined are those previously described in the materials submitted at Deadline 5, but the Applicant will be providing additional details at Deadline 7 that are intended to resolve the concerns outlined by Ms Cutting on behalf of SCC – which are largely matters of detail. Mr Rooney also drew the ExA's attention to the revised OLEMP submitted at Deadline 5, which marks further distinction between the different types of woodland being proposed for the mitigation planting around these land parcels (e.g. visual screening versus habitat). The Applicant intends to include further detail on interplanting and natural regeneration to strengthen existing vegetation, which will be provided in the updated OLEMP and Environmental Masterplan submitted at Deadline 7.
- 3.1.11 In response to matters raised by Mr John Jeffcock on behalf of SNTS relating to the impact of the fencing and width of planting proposed by the Applicant along the eastern boundary of parcel E20, Mr Turney confirmed that further detail on these matters will be provided in the revised OLEMP and Environmental Masterplan submitted at Deadline 7. He also emphasised that the potential visual impact of the fencing proposed for the Scheme has already been addressed at the previous ISH on environmental matters and, as Mr Rooney noted, will be managed through the OLEMP. Mr Rooney further explained that 15m of planting equates to

approximately 10 rows of plants, which will comprise predominantly shrubs with some trees, including pine.

- 3.1.12 The ExA queried whether increasing the width of mitigation planting would affect the location and orientation of the solar panels on the parcel. Mr Turney clarified that while further planting would necessarily reduce the size of the area in which panels could be located, their orientation would be unaffected and there would be no consequence in terms of the visual or landscape impacts of the Scheme.

3.2 General impacts on the landscape of the area; potential for mitigation and impact of mitigation proposals on the landscape

- 3.2.1 The ExA noted the Local Authorities' disagreement with the Applicant's assessment of Year 15 visual effects, namely that such effects will have reduced to an extent that they will no longer be significant, and asked whether the Local Authorities considered that further mitigation could be included to reduce effects and, if so, what they would consider appropriate in terms of balancing the need for mitigation against maintaining then open character of the landscape.
- 3.2.2 Mr Bedford KC on behalf of SCC stated that, in his view, it will come down to looking at individual parcels on a case-by-case basis to determine what mitigation measures may be appropriate.
- 3.2.3 In response to this question, Mr Turney explained that the Applicant's understanding is that, in terms of achieving balance between provision of mitigation and the preservation of open landscape character, there are no areas in relation to which the Local Authorities have stated the Applicant has gone too far with the extent of mitigation proposed. If there are any such areas, the Local Authorities will need to clearly explain this as discussions to date have been focused on increasing the level of mitigation proposed.
- 3.2.4 The ExA noted their desire to avoid a mismatch across the materials to be submitted by the Applicant and the Local Authorities at Deadline 7.
- 3.2.5 Mr Turney on behalf of the Applicant highlighted that the Applicant's Deadline 5 proposals have been discussed with the Local Authorities as part of the parties' ongoing offline discussions, and that the Local Authorities are aware of the areas where the Applicant has agreed to look at further mitigation. Mr Turney cautioned against looking at deadlines only as the materials submitted do not necessarily provide the full picture of how discussions are progressing between the parties. To assist the ExA, Mr Turney proposed that the Applicant and Local Authorities produce a schedule setting out the areas of agreement and disagreement between the parties, so that the ExA has a single consolidated list to refer to and consider.
- 3.2.6 The ExA agreed this schedule would be useful, and subsequently confirmed that it is to be provided as part of the suite of materials submitted at Deadline 7. The Applicant is to produce, in conjunction with the Local Authorities, a schedule of the respective parties' positions for each parcel under scrutiny, including the distance of any setbacks desired or offered. That document has been submitted as a separate deliverable at Deadline 7.

- 3.2.7 In response to the position set out by the Local Authorities that there is a need to avoid effects (i.e. not locate any solar development) on parcels where an appropriate balance cannot be struck between mitigation and openness of the landscape, Mr Turney clarified that the Applicant will not be proposing to remove any parcels. Rather, the Applicant seeks to understand where the Local Authorities agree that the proposed mitigation is sufficient to manage effects, and where further mitigation is considered to be required if the Scheme were to go ahead.
- 3.2.8 Mr Turney emphasised that the avoidance approach advocated by the Local Authorities is entirely contrary to the Overarching National Policy Statement for Energy (NPS EN-1). NPS EN-1 is very clear that landscape impacts will occur as a result of the development of nationally significant infrastructure projects (NSIPs) for renewable energy schemes. Applicants are required to design their schemes carefully to take account of these impacts, and the NPS gives substantial weight to nationally designated landscape areas when considering such impacts. However, the NPS expressly states that local landscape designations or values “should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.”
- 3.2.9 In this regard, NPS EN-1 recognises that the scale of renewable energy NSIPs necessarily means they will be visible and the question that is posed for determination by the ExA is whether the effects would be so damaging that they outweigh the significant benefits offered by the relevant renewable energy scheme. The issue of reducing the scale of a scheme only arises where exceptional circumstances exist, such that the potential harm is so great that it can only be addressed by removing megawatts of renewable energy from the relevant project. That is not the territory we are in for the Scheme. That is why the focus has, and should remain, on the mitigation measures necessary to address the landscape and visual effects of this Scheme.
- 3.2.10 Responding to the concern raised by Mr John Jeffcock on behalf of SNTS regarding the scale and speed of development proposed by the Scheme, Mr Turney highlighted that the development must come forward quickly to respond to the climate emergency that the UK is currently facing. The only way to deal with this emergency is to bring renewable schemes forward quickly, and there will be many more schemes brought forward in a similar manner over the next decade that will also result in changes to the character of rural landscapes. Such rapid change is necessary to meet the Government’s stated target of reaching net zero carbon emissions by 2050, which is a critical element of the Government’s response to the current climate emergency.

4 Agenda Item 3 – Historic environment

4.1 The Avenue (Chippenham Park Registered Park & Garden)

- 4.1.1 Acknowledging that matters relating to the historic environment were discussed extensively at ISH2 in December 2022, the ExA asked the Applicant to clarify where the cable and proposed access track are proposed to cross The Avenue and part of Chippenham Park Registered Park & Garden. The ExA also asked the Applicant to confirm if a more detailed plan would be provided at Deadline 7.

- 4.1.2 Mr Turney on behalf of the Applicant confirmed that a more detailed plan showing the location of the Cable Route Corridor and the proposed access track relative to The Avenue and Chippenham Park will be submitted at Deadline 7.
- 4.1.3 Mr Turney also explained that the Applicant is proposing to make use of an existing track crossing The Avenue at this location to minimise the amount of disturbance required. If works are required on the existing track, the Applicant will adopt a 'no dig' approach to avoid impacts on tree roots and other features. In terms of the cable, the Applicant has previously confirmed that trenchless techniques will be used for the crossing, to avoid potential impacts on the trees that form part of The Avenue.

4.2 Plane crash site, parcel E05

- 4.2.1 The ExA requested that the Applicant provide an update on the two potential exclusion zones around the plane crash site and whether both are still possibilities.
- 4.2.2 Mr Turney stated that the Applicant has applied to the Joint Casualty and Compassionate Centre Committee (JCCCC) for a licence to undertake works at E05. If that licence is granted, an exclusion zone of a 50m x 50m box will be used that has been developed to correspond to the identified anomaly that appears to correspond with the remains of the crashed bomber. In addition to its primary purpose of managing impacts on the archaeological interest, the proposed exclusion area will also serve the purpose of showing compassion and respect to the scene where life was lost. Areas will be in grass and marked, and an interpretive board is proposed to be placed that will better reveal in heritage terms the area where the plane crash occurred.
- 4.2.3 Mr Turney went on to explain that the Applicant has drafted the relevant DCO requirement so that it appropriately provides for either eventuality, being whether the Applicant is granted a licence from the JCCCC or not. In the event that a response from the JCCCC remains outstanding by the time a decision is to be made on the DCO, the requirement will cater for either alternative.

5 Agenda Item 4 – In-combination impacts

5.1 The ecology and biodiversity, historic environment, and landscape and visual impacts on certain land parcels

- 5.1.1 While this Agenda Item has broken up into various sub-topics, these were largely considered and discussed collectively due to overlapping issues. The Applicant's summary of discussions under this Agenda Item is drafted accordingly.
- 5.1.2 The ExA noted that, in terms of in-combination impacts, the intention was to focus particularly on sites where, in the view of the Local Authorities, adequate mitigation is not possible and so the relevant parcels should be removed from the Scheme entirely. The ExA requested that the Local Authorities provide a summary as to why the request to remove certain parcels from the Scheme has been made.
- 5.1.3 Mr Bedford KC on behalf of SCC stated that these parcels have been requested for removal because, in the Local Authorities' view, these are locations where

mitigation will not be sufficient to manage residual impacts of the Scheme and so avoidance of effects is preferred.

5.1.4 Mr Turney on behalf of the Applicant emphasised that, were the parcels to be removed as suggested by the Local Authorities, significant ecological benefits would be lost as the proposed mitigation measures would not be provided. For example, in relation to parcels E12 and E13 the Applicant has proposed significant ecological mitigation in respect of stone curlew, which has been agreed with Natural England, that will lead to benefits for the stone curlew population through enhanced habitat and protection over a 40-year period over areas within which stone curlew would not otherwise be able to nest.

5.1.5 **Post-hearing note:** The Applicant has reviewed the layout of solar panels within E12 and E13 following discussions with the Local Authorities at an environmental mitigation workshop held on 31 January 2023. In light of this discussion, and to seek to address the Local Authorities' concerns as to impacts on users of U6006, it is proposed that the boundary fences of these parcels will be set back 30m from the edge of the existing vegetation which lines the U6006. Solar panels will be set back at least a further 5m from the boundary fence. This will preserve the open setting of this feature with broad swathes of native grassland connecting habitats on both sides. It is considered that this approach satisfactorily addresses the concerns raised in respect of impacts on the users of the route.

5.1.6 The ExA asked the Applicant what the impacts on the viability of the Scheme would be if the DCO were to be framed in the terms sought by the Local Authorities with the requested parcels removed.

5.1.7 Mr Turney explained that, were the various parcels to be removed from the Scheme as sought by the Local Authorities, it would result in a total loss of 328.3 MW of renewable energy that would otherwise be generated by the Scheme:

Parcel	Power (MW)
E12	41.5
E13	14.7
E05	43.5
W03 to W12	228.6
Total	328.3

5.1.8 The loss of E12 would result in the loss of 41.5 MW of generation capacity. In the language of NPS EN-1, this would represent a significant loss of function and equates almost to a nationally significant infrastructure project on its own. The loss of E13 would result in the loss of 14.7 MW of generation capacity, which represents a significant loss of function (note that this figure would need to be amended if SCC changed its plan). The loss of E05 would result in the loss of 43.5 MW of generation capacity. This would be a significant loss of function and equates to almost a nationally significant infrastructure project on its own. The loss of W03-W12 would result in the loss of 228.6 MW of generation capacity. This equates to more than 150% of the generation capacity of the candidate design of the Little Crow Solar Park NSIP. In the language of NPS EN-1, this would represent a significant loss of function.

- 5.1.9 The total loss of generation capacity would be over 60% of the total energy to be generated by the Scheme, and the equivalent of more than six solar NSIPs. Assuming the Scheme could still be brought forward with these parcels removed, it would deliver substantially less by way of renewable energy. The Local Authorities' proposal would necessitate a fundamental reassessment of the Scheme and reconsideration of the extent and location of the Cable Route Corridor. In terms of viability, the Applicant would need to consider any proposal in detail, but it is unlikely that there would be a viable Scheme that could be brought forward in the same way as it would be a wholly different proposition. As for the grid connection at Burwell, which is agreed at 500MW, at least 60% of this capacity would remain idle if the energy generated by the Scheme were reduced to the extent proposed. This would fundamentally undermine National Grid's objective of maximising renewable energy input into the grid.
- 5.1.10 The ExA queried whether the connection to Burwell substation can only be used in relation to the Scheme or if it could potentially be used by other schemes. Mr Turney confirmed that the grid connection at 500MW is exclusive to Sunnica, which means that 500MW of capacity at Burwell is allocated to the Scheme and no other project. If the Scheme were to connect at a lower capacity, the remaining headroom would be unused, and the capacity of the substation underutilised, until National Grid sought to recover that capacity and reallocate it.
- 5.1.11 The ExA then asked the Applicant to confirm whether the Applicant was provided additional detail to what was included in the response to ExQ2.0.11.
- 5.1.12 Mr Turney explained that the Applicant's response to ExQ2.0.11 provides a schedule of the expected capacity for each parcel as well as justification for why the impacts of the Scheme on that parcel are acceptable and are outweighed by the renewable energy benefits offered by the placement of solar panels proposed. In terms of whether the Applicant was providing an additional response, Mr Turney stated that the ExA's question regarding viability of the Scheme raised a slightly different (albeit closely related) issue. The answer to that question is that it is possible that the Applicant would not develop the Scheme at all if the parcels were to be removed as proposed by the Local Authorities. However, Mr Turney emphasised that the detail on this point would depend on precisely what area(s) of the Scheme were removed. Extensive reconsideration and reassessment of the Scheme in terms of its viability, layout, extent and proposed mitigation would be required, but this is not possible without first knowing the extent of the land that would be removed.
- 5.1.13 **Post-hearing note:** Since the Hearing the Applicant has given consideration to the loss of function that would result from the 'half way' house as it was referred to in the Hearing. This is a scenario where not all of the aforementioned parcels were removed, but parts of them. That is set out in the Applicant's Response to LPA Deadline 6 Submissions [EN010106/APP/8.97] – see in particular section 2 and the response to Q2.0.11
- 5.1.14 In response to the ExA's question regarding how the Local Authorities considered the DCO could be framed to accommodate the proposed removal of parcels, Mr Bedford KC asserted that amendments to the drafting of Schedule 1 to the DCO would be sufficient, such as listing the parcels in which no solar infrastructure can be constructed.

- 5.1.15 Mr Turney highlighted that it would be a far more complex and substantial task to implement the changes being sought to the Scheme than suggested by the Local Authorities. It would not as simple as precluding the placement of solar panels of certain parcels of land via Schedule 1 of the DCO. If some parcels were removed from the Scheme, proposed mitigation for the effects of solar development on those parcels would also need to be removed, otherwise the DCO would require the Applicant to establish mitigation for effects that will not occur. Plans, substation locations and connections between the solar farm and Battery Energy Storage System (BESS) would need to be updated.
- 5.1.16 Mr Turney noted that the removal of parcels would also raise the issue of land acquisition. The parcels to be excluded from the Scheme would need to be identified and the schedule of properties required for the Scheme updated accordingly. Consideration would also need to be given to how the cable route would be provided for in order to cross parcels where no solar panels will be located, as it would not be justifiable to acquire entire parcels outright for the provision of the cable route only. The Applicant is effectively being asked to provide substantive responses on the basis of a hypothetical scheme design. Until the Applicant has a complete picture of the alternative Scheme layout that is being proposed and a full exercise has been undertaken to determine what would be required in terms of Scheme redesign, it cannot be said with certainty whether the Scheme would remain viable or not.
- 5.1.17 **Post-hearing note:** SCC has subsequently provided its proposed drafting amendments to the Applicant for consideration. That has been considered by the Applicant in its Response to Suffolk County Council's Proposed Amendments to Schedule 1 of the Draft DCO [EN010106/APP/8.104].
- 5.1.18 The ExA asked the Applicant to consider whether some compensation for the reduction in power generation resulting from the removal of parcels could be achieved through the installation of more powerful panels.
- 5.1.19 **Post-hearing note:** Further to ExA Action Point 8, the Applicant's response to the ExA's query is set out in Appendix A to this Written Summary.
- 5.1.20 In response to concerns raised by the Local Authorities, Mr Turney clarified that the Applicant is not claiming that it would be impossible to exclude some parcels from the Scheme or that the choice is between granting the Scheme on the Applicant's terms or refusal. Rather, the key point is that there are substantive outstanding questions regarding what would need to be done from a technical perspective to enable these changes to occur in a way that does not fundamentally undermine the Scheme's viability. In order to fully engage with this issue and provide a position, the Applicant would need to be given sufficient notice of any proposed changes to the Scheme and the opportunity to consider and submit revised plans.

5.2 Land parcels W01, W02 and EC04

- 5.2.1 Noting that issues relating to these parcels have largely been resolved by the Applicant's Change Request, the ExA asked the Applicant to clarify why there is a triangle shown on the latest Environmental Masterplan and Change Request plans where the Cable Route Corridor passes through what would have been Sunnica West Site B.

- 5.2.2 Mr Turney explained that this triangle marks a construction access, and that it is shaped as such due to the presence of a field drain that needs to be negotiated in facilitating that access.

6 Agenda Item 5 – Traffic and transport

6.1 Ports, AIL and crane routes: impacts and consents

- 6.1.1 The ExA noted the Local Authorities' comments regarding their desire to see a feasibility assessment outlining which ports were under consideration and the rationale for this, which would include a route inspect and assessment of the feasibility of transporting 400kV transformers from the ports to the Scheme.
- 6.1.2 The ExA stated that, in their view, such a feasibility study and assessment is necessary because although the ports may have sufficient road access infrastructure in terms of the strategic road network, the ExA does not consider the strategic road network is necessarily capable of carrying proposed AIL from the relevant port(s) to the A11/A14 in the vicinity of the Scheme. The ExA also noted their view that the local highway authorities need to be involved from an early stage.
- 6.1.3 Mr Chris Carter on behalf of the Applicant confirmed that the Applicant met with Local Authorities on 8 February 2023 to provide an update on these matters. With respect to AIL routes, at the request of the Local Authorities the Applicant has commissioned a haulier, Allelys, to undertake a review of the proposed routes between the Port of Ipswich and the relevant accesses to required areas of the Scheme. This review is currently underway, and the resulting report will be introduced to the examination at Deadline 7.
- 6.1.4 The ExA queried whether the review was only in respect of the Port of Ipswich. Mr Carter confirmed that this is correct, as Ipswich is the port that is most likely to be used for the Scheme.
- 6.1.5 Mr Michael Bedford KC on behalf of SCC noted that SCC welcomes the engagement of Haulier to undertake the AIL review. Mr Bedford KC requested that the Applicant confirm one point which had been agreed informally between the parties, being that the maximum loads transported for the Scheme will be not more than 150T.
- 6.1.6 Mr Richard Turney on behalf of the Applicant confirmed that, as had previously been verbally clarified to the Local Authorities, the typical load will likely be 130T, with a maximum of 150T for any loads (not 200T as previously stated). Mr Carter confirmed that the assessment work that has been undertaken is based on a maximum load of 150T.
- 6.1.7 In response to a query raised by Mr John Steel KC on behalf of SNTS, the ExA asked whether the Haulier review would result in changes to the configuration of trailers transporting AIL and, if so, that any such changes would be within the parameters of what the Applicant has already assessed under the Environmental Statement (ES).
- 6.1.8 Mr Turney confirmed that the assessment remains unchanged. Mr Carter provided assurance to the ExA that the Applicant's previous assessment were based on

conservative assumptions relating to trailer configuration, and therefore any changes that may be recommended by Haulier will likely be within the reasonable worst-case assessment already undertaken by the Applicant.

- 6.1.9 In response to a query raised by Mr Steel KC for SNTS, the ExA asked the Applicant whether, if the detailed AIL assessment indicates that an alternative route or method for transporting AIL would reduce the level of oversailing, it was possible that less land would be required in terms of compulsory acquisition.
- 6.1.10 Mr Turney acknowledged that this was possible, but noted that the Applicant has not yet reviewed the Haulier report but will update the ExA and interested parties on any proposed changes to oversailing requirements that may arise out of the report's findings.
- 6.1.11 The ExA asked the Applicant to outline the routes that are going to be used on the strategic road network to and from each of the three sites that require 400kV transformers, in terms of obstacles identified and the measures required to overcome them.
- 6.1.12 Mr Carter explained that this information is set out in detail in Chapter 5 of the Framework Construction Traffic Management Plan (FCTMP) **[REP5-015]**. In summary:
- a. West Site A – Access at West Site A, La Hogue Road, which is a short distance from the A11 northbound slip road. The swept path for the 1,000T crane and 46.63m AIL (being the 400kV transformer) are shown in Section 5.5 of the F-CTMP. The wheel paths for the crane remain within the highway. The body of the 1,000T crane will overhang the central traffic island at the junction of La Hogue Road and the A11, necessitating temporary removal of traffic signage. However, this will not be required for 650T or 400T cranes. The 46.63m AIL can safely traverse the junction, but the trailer will oversail the inside grass verge of the junction by approximately 3.2m, remaining within the boundary of the highway but requiring temporary removal of a street sign.
 - b. East Site A – Various alternative routes were assessed from the A11 to the East Site A access, which are set out in Section 5.6 of the FCTMP. Mr Carter described the chosen route as set out in the FCTMP:
 - i. First, at the A11 offslip with the B1085 the trailer for the AIL oversails the inside grass verge but remains within the boundary of the highway and no temporary alterations are required as there are no vertical obstructions. The 1,000T crane can manoeuvre the junction entirely within the carriageway.
 - ii. The path then moves on to the S-bend at the B1085 just outside the entrance to Chippenham Park. The trailer will oversail the inside verge but there are no vertical obstacles requiring temporary removal, and it is entirely within the highway. the 1,000T crane can manoeuvre entirely within the carriageway itself.
 - iii. The movements on the B1085 Chippenham Road involves an oversail for the AIL on the inside of the verge, but no alterations required, and the 1,000T crane can manoeuvre entirely within the carriageway.

- iv. There will be branch trimming required at the centre of the junction at the B1085 and Mildenhall Road to enable the AIL to navigate the junction, but the vehicle itself remains within the highway. The 1,000T crane can manoeuvre the junction entirely within the carriageway.
- v. At the B1102 Mildenhall Road / Ferry Lane, also termed Freckenham Road, junction, the AIL trailer oversails the inside of the verge by approximately 4.3m over private land that is included in the Order Limits. This would require the existing private fence/gate to be removed or relocated as well as some minor vegetation clearance. If the report from the haulier identifies a less intrusive approach, the Applicant will consider that as far as reasonably possible. The 1,000T crane can manoeuvre within the junction. The body of the crane would overhang the verge but not to the extent that vegetation trimming or obstacle removal would be required.
- vi. Then at Beck Road / Ferry Lane (Freckenham Road), the AIL trailer oversails the inside of the verge by approximately 2m requiring the temporary removal of two road signs, which would be replaced immediately following the vehicle passing through. There will be some branch trimming at this location as there is a tree overhanging the carriageway. The 1,000T crane can manoeuvre within the carriageway.

Post-hearing note: As Mr Carter confirmed at the Hearing, Access K at Beck Road will be used by cranes and AILs.

- c. East Site B – Access at Elms Road. At the A11 northbound slip / Elms Road T junction, when the 1,000T crane turns off the A11 there would be temporary removal of a road sign, as a worst-case assessment. The AIL can safely manoeuvre this junction. The trailer will oversail the verge requiring temporary removal of a street sign but will remain entirely within the boundary of the highway. There are no issues getting into Elms Road or into the site off Elms Road. As the ExA is aware, the Burwell route has been removed.

- 6.1.13 The ExA asked the Applicant to confirm that if there is any change to these routes as a result of the detailed haulier assessment, the Applicant would inform and update the ExA.
- 6.1.14 Mr Carter confirmed that, while the Applicant does not anticipate the routes will change, any changes (if needed) following the haulier review would be incorporated into the next track change version of the FCTMP submitted.
- 6.1.15 Mr Bedford KC for SCC asked whether the use of local roads for the movement of AIL from the port to the strategic road network would be included in the haulier review.
- 6.1.16 Mr Carter confirmed that this is a key part of the scope for the haulier review.
- 6.1.17 Mr Steel KC for SNTS asked, in relation to land owned by the Katharine Shore Charity in Freckenham, whether the haulier review could look specifically at the ability to reduce the land required to be taken to enable AIL movements.

- 6.1.18 Mr Turney noted that issues relating to the Katharine Shore Charity land were addressed at the Compulsory Acquisition Hearing (CAH) on 14 February 2023. The Applicant is seeking to agree a licence with the Trust to enable the oversail. Mr Turney highlighted that the interference is minimal, and will be further minimised because the truck will be remaining entirely on the road, and it will only be a single delivery.
- 6.1.19 The ExA asked whether the trailer will be making a return journey, requiring another oversail over the property. Mr Carter confirmed that the trailer can be disassembled into smaller components for the return journey, removing the need for any oversail.
- 6.1.20 Ms Camilla Rhodes on behalf of SCC and CCC raised a concern regarding the plans and reports submitted by the Applicant not including highway boundary data, despite requests from both councils that such data be included.
- 6.1.21 Mr Turney explained that the Applicant has received CCC's highway data but is awaiting SCC's data. Once this data is provided, the Applicant will overlay it onto the tracking and access plans for the FCTMP and provide these to SCC and CCC, outside of the Examination process, to assist them. The Applicant is not proposing to make this change to any of its approved plans.
- 6.1.22 Mr Turney also emphasised that the AIL routes identified are all within the Order Limits for the Scheme. The precise position of the highway boundary is not material as the Applicant will have taken temporary possession rights over the relevant land parcels, such that the location of the highway will not influence the ability to deliver the Scheme. The Applicant bears the consenting risk in terms of what powers it seeks from the Secretary of State. A detailed comparison of highway width data files with the Applicant's plans is not necessary for deciding whether or not the DCO should be granted.

Post-hearing note: The Applicant would like to expand on its position in relation to the use and application of highway boundary data as set out at ISH4. Fundamentally, the relevant powers under the DCO apply to the Order limits rather than being restricted to highway boundaries. The Applicant has drawn the Order limits to include the land that it considers to be necessary in order to deliver the Scheme and the powers that it has included in the Order, such as the power to temporarily possess land and to temporarily suspend the exercise of existing rights during a period of temporary possession. Taken together this ensures that, irrespective of the precise location of the highway boundary, the Applicant would be empowered by the Order to carry out the required works without impediment.

Nonetheless, the Applicant has agreed to purchase the highway boundary data and present it on plans which sit outside of the examination. As was reported at ISH4, highways boundary data was received from CCC within approximately 10 days of the Applicant's request and is now being incorporated onto those relevant plans. Meanwhile, SCC has indicated that its timescales for providing highway boundary data is 12 to 16 weeks. Therefore, this issue will continue beyond the examination but, as previously noted, it is not a matter which should concern the ExA given the powers the Applicant is seeking in the DCO.

6.2 HGV routes and forecast impacts

- 6.2.1 The ExA asked the Applicant what measures might be needed to ensure compliance with signposted diversions put out by National Highways, for example during construction of A11 projects, noting that such schemes are not committed.
- 6.2.2 Mr Carter stated that if National Highways put in a diversion route from the strategic road network, contractors will be required to comply with any such diversions. The FCTMP also includes a requirement to monitor and report on any changes to the routes used by HGVs to access the construction sites.
- 6.2.3 In response to a question from the ExA as to whether a specification to use diversionary routes could be included as a general requirement for road closures, for both local and strategic road networks, Mr Carter confirmed that this could be included in the wording of the FCTMP. The Applicant sees this as something that a considerate contractor would carry out as a matter of course.
- 6.2.4 The ExA asked the Applicant to confirm where and how it is proposed HGVs will pass one another along La Hogue Road, as the HGVs proposed to be used for the Scheme are larger than those using La Hogue Road at present.
- 6.2.5 Mr Carter noted that highways works on Elms Road and La Hogue Road are addressed in the FCTMP (sections 5.2.6 to 5.2.11) and indicative plans of these works are provided in Annex C to the FCTMP, which is referenced in section 5.2.10.
- 6.2.6 The ExA queried how much of La Hogue Road is going to require treatment to accommodate HGV movements.
- 6.2.7 Mr Carter explained that the carriageway along the section between the A11 and La Hogue Road, which is approximately 400m in length, will be widened to enable sufficient passing locations for two HGVs, with good forward visibility between passing locations. There is enough space within the Order Limits for to ensure such passing places can be provided. A site visit has been undertaken to confirm that this will be possible. Mr Carter also highlighted that the duration of constriction is relatively short, meaning in overall terms the total number of HGVs using La Hogue Road will be relatively limited.
- 6.2.8 The ExA asked the Applicant to expand whether HGVs will have an impact on receptors along La Hogue Road in terms of noise, safety, or general amenity.
- 6.2.9 Mr Carter confirmed that, in terms of safety and driver delay, the work undertaken to ensure enough space is provided for HGVs to pass one another will mean that this can be achieved without the need for HGVs to run onto the verge. Mr Carter went on to explain that HGV movements will also be specifically timed to avoid peak travel times on the highway network, and that the total number of vehicles will be limited and the period of time within which HGV movements will be occurring is short.
- 6.2.10 Mr Turney noted that, in terms of amenity impacts, the noise section of the ES **[APP-042]** concludes that any change in noise as a result of construction of the Scheme will be well below the ambient noise level, having a very low magnitude of impact in terms of traffic noise. As for potential impacts on other road users, Chapter 13 of the ES **[APP-045]** concludes that residual amenity, safety, and fear

and intimidation impacts will be minor adverse only. The Applicant recognises there will be change, but the residual effects are to be regarded as minor adverse on key amenity categories. This assessment of effects takes into account the current baseline of traffic flows on La Hogue Road, and the fact that construction traffic movements will take place across operational hours, not all at once.

- 6.2.11 In response to a query from Mr Bedford KC for SCC regarding whether the passing places on Elms Road are to be retained post-construction, Mr Turney confirmed that Applicant would check how these are proposed to be dealt with following construction, but that it is unlikely the Applicant would have any concern with leaving them in place if that was the preference of the highway authorities.

Post-hearing note: the extent by which the passing places on La Hogue road can be retained following the completion of the construction of the project will be resolved following the detailed design of those works.

- 6.2.12 Ms Rhodes for SCC and CCC noted the councils' request for local roads to be included within the proposed Public Rights of Way (PRoW) network for the Scheme.
- 6.2.13 Mr Turney noted that PRoW plans have a specific purpose in the DCO context of showing the powers granted by the DCO. The Applicant will not be changing the PRoW plans in that respect, but an updated OLEMP is to be provided at Deadline 7 that provides plans showing the local roads used by the public road within the PRoW network.
- 6.2.14 Mr Steel KC for SNTS queried whether the two site accesses on Chippenham Road to the northeast of Snailwell are to be used during construction. Mr Carter confirmed that these site accesses are to be used during the construction phase, and Mr Turney noted that figures relating to the number of HGV movements along these accesses can be found in Appendix 13B to the ES [APP-117]

6.3 Site accesses

- 6.3.1 The ExA noted the change made to site accesses to the Cable Route Corridor as a result of the Applicant's Change Request, with Cable Route Access L, which previously provided access via the HPUT premises near the A142, has now been removed. The ExA asked the Applicant whether the removal of this access has any knock-on effects of an appreciable magnitude.
- 6.3.2 Mr Turney confirmed that there will not be any knock-on effects. The Applicant introduced an alternative means of accessing that part of the Cable Route Corridor through the Change Request that avoids having to use HPUT's site access.
- 6.3.3 The ExA queried how HGV drivers will know which access they are supposed to use at this location, and how to get there. Mr Turney stated that this will form part of the briefing all contractors will be provided with and it will be a standard part of the CTMP to inform drivers of which accesses they are to use and how to get to them. The Applicant will also monitor compliance of HGV drivers with these directions, as well as any signage put in place (per request from the Local Authorities) directing drivers to the correct access. This requirement is already included in the CTMP at section 7.4.2.

- 6.3.4 The ExA requested an update from the Applicant on the latest position in terms of proposed road safety audits for site accesses.
- 6.3.5 Mr Carter confirmed that the Applicant has agreed with the Local Authorities that road safety audits will be undertaken at certain site accesses. The Applicant has provided CVs of the proposed auditors to the Local Authorities to review and will submit briefs to the Local Authorities for their approval prior to undertaking any audits.
- 6.3.6 The ExA asked which accesses will be covered by the audits. Mr Carter stated that these will be the main site accesses on La Hogue Road and Elms Road as well as accesses where substations are going to be accessed from. These locations will be confirmed when briefs are submitted to the Local Authorities.
- 6.3.7 The ExA queried whether a requirement to carry out road safety audits will be included in the CTMP. Mr Carter explained that, for the Applicant, it is not considered necessary to include such a requirement in the CTMP as this is something that can be taken offline and reported back to the ExA through the Statements of Common Ground (SoCGs). However, the Applicant would not be strongly opposed to such a requirement if one were to be sought.
- 6.3.8 The ExA asked the Local Authorities for their position on road safety audits. Mr Bedford KC for SCC and Mr Hashi Mohamed on behalf of CCC both welcomed the indication that has been given by the Applicant in this regard but noted they have not yet provided substantive feedback.
- 6.3.9 In relation to Cable Route Access J, the ExA asked the Applicant to explain how oversailing onto the opposite carriageway and potential rear collisions are going to be avoided when HGVs are turning into this access.
- 6.3.10 Mr Carter explained that the Applicant is updating the tracking showing how vehicles will enter the site through this access, including demonstrating that vehicles will not crossover the centre line. If necessary, some of the land on the lefthand side of the access could be used to ensure vehicles do not cross over to the far side of the carriageway. The Applicant differs from the opinion of the Local Authorities as to whether potential rear collisions is a road safety issue. This is also one of the locations where a road safety audit will be undertaken, which will provide an independent view as to whether this is a problem.
- 6.3.11 The ExA sought to clarify that Site Access I will be used for all phases and Site Access J on Golf Links Road has been removed.
- 6.3.12 Mr Carter stated that there is an access on Golf Links Road, but this will not be used for HGVs. Site Access K is no longer on Golf Links Road, with Site Access J acting as a secondary access during the operational phase only meaning no HGVs will be using it. Site Access I on Newmarket Road is also a secondary access, but this will be used only during the construction and decommissioning phases, not during the operational phase.
- 6.3.13 The ExA requested an update from the Applicant on what is now proposed in terms of safety measures and signage strategy at Site Access I, which is at the A11 Newmarket Road / Golf Links Road junction.

6.3.14 Mr Carter explained the wider point on Newmarket Road is that the Applicant is proposing a construction and decommissioning access that is 90m from the junction with the A11. A speed survey at the access itself was previously undertaken that identified 120m worth of visibility being required. The Applicant is in agreement with SCC that 90m visibility splay is a departure from standard, but a safety audit has been undertaken and reported on in the FCTMP. That audit recommended that a signage strategy be put in place to advise vehicles that an access is upcoming and to expect vehicles to come out of that access. The Applicant understands that SCC, as the highway authority, has issues with this approach in terms of accepting a departure from standard and concerns around visibility. The survey was undertaken at the access point itself, where vehicles will have turned off the A11 and accelerated up to the access point, rather than at the edge of the visibility splay, which is the technical requirement. This was done to provide a robust assessment, as vehicle speeds would be higher at the access rather than at the extent of available visibility.

6.3.15 To further examine this point, an Automated Traffic Counter is being put in place to measure speeds at the extent of the available visibility. The Applicant spoke with SCC, and they have accepted that that this will give a better understanding of what visibility actually is rather than the worst case scenario of taking it at the access itself. There is reasonable confidence that with the radius coming off the A11 and the need for vehicles to slow, the actual speeds measured closer to the access rather than the access itself would lessen the visibility requirement at that location and resolve SCC's concerns.

Post-hearing note: The results of the ATC speed survey have been received and the Applicant can confirm that the measured 85 percentile speed in the northbound direction is 25.3mph, meaning that the 90m of visibility provided is sufficient. This information, along with the raw survey data, has been provided to SCC and the FCTMP is updated accordingly at Deadline 7.

6.3.16 In response to the ExA's query regarding whether the signs would not need to be permanent as they are not required for the operational phase, Mr Carter confirmed that signs will only be in place to signal the upcoming construction access.

6.3.17 Mr Rigby asked the Applicant how it is envisaged that safe access will be provided at West Site A, Site Access A for the crane without the need for significant vegetation removal on both sides of the junction.

6.3.18 Mr Carter clarified that the Applicant has assessed foliage removal requirements at this access point and has provided an updated plan showing visibility splays to CCC for their review as requested. The access itself can accommodate two-way car movements as well as a car and a turning HGV. HGV deliveries would be timed not to coincide, but in the unlikely event that they did so, protocols are written into the FCTMP to address this by requiring the outbound vehicle to be held in the site until the incoming vehicle had passed through.

6.3.19 In response to outstanding concerns regarding site accesses raised by the Local Authorities, Mr Carter highlighted that these are largely points of detail that are currently being discussed between the Applicant and the relevant officers at the Local Authorities. The Applicant is seeking to address these concerns in its next

set of submissions at Deadline 7 primarily through updated drawings in Annex C of the FCTMP.

6.4 Traffic management and regulation

- 6.4.1 The ExA asked if the Local Authorities are content with the revised drafting proposed for Article 44 of the DCO and, if not, what they would prefer to see. It was agreed between the ExA and the parties that this matter was best left to be dealt with as part of the discussions on the draft DCO.
- 6.4.2 The ExA asked the Applicant to specify those locations for which temporary traffic management layouts will be provided during construction, and whether these would tie in with accesses the accesses for which safety audits are being undertaken.
- 6.4.3 Mr Carter confirmed that the locations where temporary traffic management layouts are proposed tie into the locations where specific concerns have been raised by the Local Authorities, similar to the road safety audits but the audits are a slightly different matter as they relate to safety, whereas the Local Authorities' comments on the temporary traffic management relate to deliverability.
- 6.4.4 Mr Bedford KC for SCC welcomed the Applicant's commitment to undertake assessments at the relevant locations, but noted that SCC considers this should include Site Access D on Newmarket Road.
- 6.4.5 Mr Carter confirmed that this access is going to be included in the list of locations where temporary traffic management plans will be put in place.
- 6.4.6 In response to the ExA's query regarding the respective parties' positions on the operational traffic arrangements, Mr Carter noted the Applicant's forthcoming response to the ExA's third written questions regarding existing uses, which will include a table setting out, access by access, how these are currently used and what would occur at each access at each phase of the Scheme. Progress is being made to resolve this matter. Effectively, for the operational phase the key point is that if there is no intensification of use of an access (and where it is demonstrated how this will be achieved), they will continue to be used in a similar way to how they are currently (i.e. farm access). During the operational phase, accesses to the cable will not be used regularly, except when a fault is identified. As for accesses to the solar panel sites, existing agricultural use will not continue at the same level. Rights of access will be retained for those who need them, but it will be a lower intensity use of land than currently. Any HGV movements would be limited to planned maintenance, a matter which is being addressed through the OEMP; and any unforeseen activities resulting in higher usage would need to be agreed with the Local Authorities. Article 5 of the draft DCO provides that works that result in materially different effects would not be authorised as maintenance. The Applicant has committed to provide a schedule of such works to the relevant Local Authorities on an annual basis.
- 6.4.7 In response to a point raised by Mr Bedford KC for SCC regarding the placement of a cap on staff vehicle and HGV movements, Mr Turney confirmed that this will be included in the next iteration of the FCTMP being submitted at Deadline 7.

7 Agenda Item 7 – Development Consent Order

7.1 Compensation package(s), s106 agreement(s) and side agreement(s)

Highways agreement

- 7.1.1 The ExA confirmed that the Applicant submitted on 3rd February 2023 draft protective provisions for the Highways Authorities and that the Authorities will want to consider these protective provisions so the Applicant has not submitted an updated Construction Traffic Management Plan at this stage and will do so at Deadline 7 to reflect what has been agreed with the Councils.
- 7.1.2 Mr Turney confirmed that this reflects the positions and that the protective provisions were provided in draft form to the Examination and the Local Highways Authorities. The protective provisions have not yet been subject to any comments as they were provided relatively recently, but the Applicant has spoken to both SCC and CCC who have concerns. However, there are productive conversations on the terms of the side agreement happening following the precedent provided by SCC on another NSIP and the Applicant hopes and expects that this will be wrapped up by Deadline 8 when Examination finishes. The protective provisions that are included in the draft DCO are drafted so that they can be overtaken by a subsequent side agreement, but the Applicant is hopeful that it can avoid the need to go down the protective provision route at all.
- 7.1.3 The ExA confirmed that they still need to look at the protective provisions in case side agreement isn't completed in time. Mr Turney confirmed yes, but that it isn't the highest priority for the ExA, as the Applicant can update them on progress at Deadline 7 and hopes to inform the ExA at Deadline 8 that the side agreement is completed.
- 7.1.4 Mr Bedford KC confirmed that the Applicant's summary of the position is correct and the draft protective provisions **[AS-319]** are not currently in a sufficient form, but SCC hasn't yet provided comments as this will follow at Deadline 7 and a copy of comments will be shared with the Applicant beforehand. Mr Bedford KC confirmed that SCC sees the protective provisions as a fall back position also and that progress is being made on the side agreement.
- 7.1.5 The ExA noted that it has two points to raise on the protective provision and queried whether they are included in the draft DCO it will be Schedule 12 part 13? Mr Turney confirmed that this is correct. First, the ExA queried whether in paragraph 9 where it says "*If the undertaker has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph [(8)] and has not subsequently made reasonably expeditious progress towards their implementation within 28 days*", would this be better expressed by saying "or in any event has not subsequently made reasonably expeditious progress". Mr Turney confirmed yes it should, as this paragraph should say "or" to suggest it is both the undertaker hasn't taken steps to comply or it has not made reasonably expeditious progress. This will be updated in the draft protective provisions.
- 7.1.6 Secondly, the ExA noted that in paragraph 10 which refers to 'in the case of emergency', but what is an emergency is not defined. It was noted that emergency

works is defined in the protective provisions for the benefit of Cadent at Part 4 of Schedule 12 and in the protective provisions for the benefit of National Grid at Part 6 of Schedule 12, which refers back to the definition in the New Roads and Street Works Act 1991. The protective provisions for the benefit of National Highways at Part 9 of Schedule 12 also refers to 'in the event of emergency'. The ExA requested that the parties consider what should be included in terms of defining what is and isn't an emergency. Mr Turney confirmed that the Applicant would look at this and the New Roads and Street Works Act 1991 would likely be a useful starting point.

- 7.1.7 Mr Mohamed confirmed that CCC's view is that the protective provisions are a fall back position, which reflects how they are drafted, and CCC's preference is to enter into the side agreement. Mr Mohamed confirmed that weekly meetings between the Applicant and SCC on the terms of the side agreement are taking place, but that CCC is not attending those meetings as it is instead liaising with SCC on the agreement.

S106 agreement

- 7.1.8 The ExA queried whether based on the Local Highway Authority PRow Improvement Plan, there is a question about how would the adverse impact of the Scheme on local communities be mitigated by addressing the requirements of the Councils' statutory improvement plan **[REP4-137]**. The Applicant responded by saying that it has not identified any adverse impact from the scheme during operational phase relating to PRow, but the Applicant recognises the comments made by the Interested Parties and Councils, so is willing to enter into a s106 agreement with CCC and SCC to create and / or improve existing PRow within the vicinity of the scheme. The ExA noted that Heads of Terms have been issued to both Councils in January 2023 for further discussion and queried whether SCC has received them and an update on the current position.
- 7.1.9 Mr Bedford KC confirmed that the Heads of Terms have been received and responded to and that a draft s106 agreement was circulated for review on 16 February 2023. Mr Mohamed noted that CCC has its own Heads of Terms for the s106 agreement, although Mr Turney confirmed that it was joint Heads of Terms that were sent to both SCC and CCC for a joint agreement. The Councils confirmed they are hopeful that agreement can be reached before the end of Examination and it was suggested by Mr Mohamed this may be by Deadline 8 or 9.
- 7.1.10 Ms Rhodes noted specifically on the contribution for PRow that, if satisfactory agreement can be reached on the terms of the s106 agreement to mitigate what CCC sees as an adverse impact of the landscape on local communities, non-motorised users and trail riders, then CCC will be in a position to withdraw its objection of the scheme in relation to the adverse impact to communities. Ms Rhodes noted that it would not be possible to completely mitigate against these impacts, so the PRow Contribution should not be seen as just a benefit for local communities as it's being provided to mitigate an adverse impact. It was noted that CCC has asked the Applicant to update the tone of the assessment to reflect that feeling by local communities.
- 7.1.11 Mr Bedford KC noted that the District Councils are also intended to be parties to the agreement and it's under discussion now as to how that would work.

- 7.1.12 **Post-hearing note:** the Applicant has considered this position further and it does not currently anticipate including the District Councils as parties to the section 106 agreement. Given the nature of the obligations in the draft agreement that is being negotiated (payment of a PRow Contribution to be administered by the Counties, and payment of a contribution to fund Stone Curlew Research likely to be administered by RSPB or the Applicant with the County as the enforcing authority), there are no covenants required to be given to or by the District Councils and therefore nothing that would be enforceable by them.
- 7.1.13 Mr Turney confirmed that there are currently 26 parties to the draft agreement with all the landowners, so there are some complexities on that front, but the operative provisions are fairly straight forward in that there are two contributions in the draft s106 agreement of:
- (a) the Public Rights of Way and Connectivity Contributions (PRow Contribution), which is a sum of money that is identified as being needed in the PRow Improvement Plan that is payable to both County Councils. This will go some way to addressing the concerns raised by Ms Rhodes. The amount offered by the Applicant is £200,000 and the precise detail of how it will be expended will rest with the Councils; and
 - (b) the Stone Curlew Research Contribution, which is an obligation to pay a sum of money to the Local Authorities that will be paid onto the RSPB. Stone Curlew was discussed at the last hearings and reference was made to a lapsed RSPB Stone Curlew project that was surveying areas outside of Special Area of Protection to make observations about functionally linked areas. The Applicant has proposed a sum of £140,000 that can be used to provide funding for research such as that to be continued.
- 7.1.14 The ExA queried whether completing the s106 agreement by Deadline 8 or 9 is realistic given the number of parties. Mr Mohamed confirmed that was CCC's position before hearing the number of parties, which is very high, and queried whether that is accurate. Mr Turney confirmed that the timeline of completing before the end of Examination remains accurate from the Applicant's perspective.
- 7.1.15 Mr Bedford KC questioned the figure of £200,000 referred to as the PRow Contribution and stated that they would continue this discussion outside of the hearing.
- 7.1.16 **Post-hearing note:** the Applicant and the County Councils have continued discussions on the terms of the s106 agreement and the Applicant has agreed to the Councils' request that the PRow Contribution is increased to £500,000, to fund a package of public access mitigation strategy measures, comprised of enhancements to existing PRow, creation of new PRow or permissive paths, and upgrading or providing new connectivity points for users of PRow or permissive paths. It is the Applicant's understanding that this contribution potentially would address the concerns raised by the Councils in terms of impacts to the PRow network, however, the Applicant is still in discussions with the Councils as to the details of how the contribution could be spent, and so this position cannot yet be confirmed. The key outstanding point of discussion between the parties (with

respect to the PRow Contribution) relates to the areas where the contribution could fund an order to create a new PRow (that is, without landowner agreement). The Applicant is somewhat restricted as to what it can agree in this respect, in order to ensure it does not breach the voluntary agreements it has reached with landowners (as required in order to minimise the use of compulsory acquisition powers). The Applicant and the County Councils are actively engaging and are endeavouring to complete the legal agreement to secure the planning obligations. The agreement has been heavily negotiated, and the Applicant currently anticipates that execution and completion of the agreement prior to the end of the Examination is achievable.

- 7.1.17 The ExA requested that the parties consider how it can or should weigh in the balance any failure to complete the s106 agreement. Mr Bedford KC confirmed SCC's position that it would be appropriate for the ExA to adopt a conventional approach if the ExA is persuaded by SCC's representations that there are residual impacts that need to be either mitigated or compensated. If the s106 agreement is concluded that would provide a mechanism to address those residual impacts in a way the authorities thought of as satisfactory, meaning it would be material to the ExA's conclusions. If an agreement is not concluded and the impacts remain outstanding and are not mitigated or compensated for, that would be material but the balancing exercise would be for the ExA.
- 7.1.18 Mr Turney confirmed that the Applicant's analysis is the same as set out by Mr Bedford KC. If the s106 agreement is completed then the ExA will consider whether those concerns have reduced weight against the secured mitigation package. Mr Mohamed confirmed that he agrees with both Mr Bedford KC and Mr Turney's analysis and that the package needs considering in terms of what it means to the communities as part of the balancing exercise, which he estimates to be 15 parishes across the two Councils' areas.
- 7.1.19 The ExA queried the status of the community benefits package that was referred to in the Councils' Local Impact Report **[REP1-024]**. Mr Turney confirmed that the Applicant is proposing a community benefits package, but that it is not an obligation that goes into the planning balance although it will be a substantial fund being made available to be administered by an organisation to further community interests in an area affected by the scheme. The sum is in dispute at the moment, but in any event the Applicant will make a commitment to provide a substantial fund. Mr Turney also noted that the Councils will receive a substantial contribution on business rates that will be retained locally in the order of millions of pounds per year.
- 7.1.20 It was agreed by the Applicant and the Councils that the community benefit fund must not be considered by the ExA as part of considering the planning balance in accordance with R (on the application of Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council [2019] UKSC 53. Mr Bedford KC noted that consideration of business rates from the Scheme also cannot be considered as part of the planning balance and, in any event, SCC has serious issues about the hypothecation of business rates as it is a separate regime. SCC does not accept the nexus that the Applicant is drawing between the business rates liability of a commercial venture and the community benefits package. Ms Parekh confirmed that WSC is also concerned about the link with business rates as it is a separate

regime. Mr Steel KC noted that for the purpose of the record SNTS agrees entirely and so will not consider the application of business rates in its representations.

7.2 Articles of the draft DCO

- 7.2.1 **Article 27 (Temporary use of land for constructing the authorised development):** the ExA noted that ECDC has indicated concerns about the flexibility of the phrase 'temporary use of land' regarding the lack of precision. The ExA queried whether ECDC has given further thoughts about what time limits may be appropriate to stipulate for particular uses of land referenced in the draft DCO. Mr Mohamed confirmed ECDC thinks 24 months would be suitable, as that is the construction period the Applicant has referred to. Mr Mohamed requested that Article 27 is updated to include a time limit of 24 months; however, ECDC will double check this as it may not be the appropriate time limit for all circumstances.
- 7.2.2 Mr Turney responded to confirm that the Applicant won't be able to agree with ECDC on this as the purpose of temporary use is to minimise the amount of permanent compulsory acquisition that is needed. Restricting the temporary use provision in this way would potentially cause the Applicant to use compulsory acquisition powers more than would otherwise be necessary as, if the period doesn't prove to be adequate, more land would need to be acquired permanently so using temporary use powers is what the Application should be doing to minimise permanent land take. Mr Kean noted that it is a question of proportionality but also certainty and invited ECDC to propose drafting to address their concerns and to provide a robust justification for varying the terms of the draft DCO.
- 7.2.3 Mr Mohamed also noted that ECDC is concerned that the power in Article 27(1) means temporary possession can be used for the removal of buildings and vegetation during a period of time that seems limitless. The ExA invited ECDC to include this in their post hearing submission. Mr Turney noted that if ECDC is concerned with the specific works then these are environment impacts and the points should be made in respect of the Construction Environmental Management Plan [REP5-043] rather than in relation to Article 27 itself, with the exception of Article 27(a)(i) which authorises temporary use for the oversailing plot.
- 7.2.4 **Article 2 (Interpretation):** Mr Bedford KC confirmed that SCC is concerned with the definition of 'permitted preliminary works' as some of the items within that definition have the potential to include new or altered accesses to parcels to undertake those permitted preliminary works. SCC is concerned that currently Requirement 16(3) regulates traffic management associated with permitted preliminary works, but it doesn't appear to cover creation or alternation of access. SCC wants to see the definition of 'permitted preliminary works traffic management plan' expanded so that it deals with access arrangements and so that any access works are the subject of consent of the traffic management authority. Mr Turney confirmed this could be taken on board, but it doesn't require changes to the draft DCO, as the side agreement will require authority for changes to the highway, but we can call it the 'permitted preliminary works traffic management and access plan' in the next version of the draft DCO that is submitted.
- 7.2.5 The ExA noted that ECDC has raised concerns in its submissions [REP5-073] regarding the scope of the definition of 'maintain' and proposed an alternative

definition and a new requirement to be added to Schedule 2 of the draft DCO that requires the undertaker to get consent when 'replacing' part of the Scheme.

- 7.2.6 Mr Turney confirmed the Applicant's position that it considers the definition of maintain to be adequate, as if the undertaker replaces elements of the Scheme it wouldn't expect to seek new development consent for these works, not least due to the substantial delay that it would cause. Mr Turney noted that the Applicant has looked at ways for the environmental effects of maintenance to be anticipated, which has satisfied at least one of the local authorities (WSC), but ECDC has not yet confirmed this is acceptable. In particular, the Applicant revised the Framework Operational Environmental Management Plan **[REP5-107]** at Deadline 5 to include a requirement to provide an annual schedule of planned maintenance so that it can be considered by the authorities. This must be considered in the context of Article 5(3), which deals with the concern about environmental effects as the power to maintain the authorised development doesn't authorise any replacement works that give rise to new or materially different effects. This means the Councils will know, and be able to comment on, the maintenance proposals each year rather than be constrained.
- 7.2.7 The ExA noted that the definition of 'maintain' in the draft DCO is a departure from the concept of development and maintain under the Town and Country Planning regime, so has either party looked at precedent in other DCOs on this point?
- 7.2.8 Mr Mohamed reiterated ECDC's concern that the definition is too wide. The ExA queried if there are whole fields that are scheduled to be replaced, then how is this something that hasn't been considered as part of the EIA that accompanied the DCO application and so does ECDC see Article 5(3) as a weakness? Mr Mohamed advised that ECDC is concerned that replacement could also mean demolition of the existing authorised development so there would be two-way traffic to remove old apparatus and replace it with new apparatus, as well as it not being clear to what extent are works repairing the authorised development and to what extent are they wholesale replacement. ECDC is trying to move away from words like refurbish, reconstruct, replace in a way that it doesn't see in the ordinary English meaning to relate to activities such as inspecting, altering, adjusting for maintenance.
- 7.2.9 Mr Turney confirmed that precedent is provided in other DCOs including Little Crow Solar Park Order 2022 which includes the same wording to 'remove', 'reconstruct and 'replace'; however, this Order does not include the specific restriction to not remove or replace the whole of the authorised development, rather it includes the following wording in the definition of 'maintain' that has the same effect as Article 5(3) of the draft DCO: *"provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement"*.
- 7.2.10 **Post hearing note:** in drafting the DCO the Applicant considered other recently made DCOs, including both made solar DCOs, and notes that, whilst the exacting order of wording may differ, the scope of the definition of maintain to include 'remove', 'replace' and 'reconstruct' has precedent in several other DCOs, including the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022 and the Riverside Energy Park Order 2020.

- 7.2.11 Mr Mohamed sought to clarify that ECDC does not want to deal with a whole new DCO when the undertaker replaces elements of the Scheme, but as this in effect could be up to 99% of the authorised development it is asking for a requirement that will probably lead to an updated Construction Environmental Management Plan rather than a new DCO application.
- 7.2.12 Ms Parekh confirmed that WSC responded at Deadline 6 [REP6-080] to the Applicant's proposed amendment to the Operational Environmental Management Plan [REP5-010] with some additional wording to this provision which, if agreed, would satisfy their concerns.
- 7.2.13 **Post-hearing note:** the Applicant confirms that WSC's proposed wording is agreed and has been included in paragraph 2.1.1 of the updated version of the Operational Environmental Management Plan submitted at Deadline 7. It is the Applicant's view that the Councils' concerns are best addressed in the updated Operational Environmental Management plan as has been recognised by WSC.
- 7.2.14 **Article 9 (Power to alter layout, etc., of streets) and Article 11 (Temporary stopping up of public rights of way):** The ExA summarised that CCC has requested amendments to Article 9 and Article 11 in its Deadline 6 submission [REP6-057] at pages 40 onwards in response to the Applicant's submissions made at Deadline 5. CCC has requested that Article 9(3)¹, which reads the "*undertaker must restore any street that has been temporarily altered under this order to the reasonable satisfaction of street authority*" should be amended to add the words '*through inspection and certification by the street authority in accordance with the procedure set out in the legal agreement between the relevant parties*'.
- 7.2.15 Mr Turney noted that the Applicant has responded to the other point on additional reference to inspection certification at Deadline 6, which explained that paragraph 7.2.15 – 7.2.16 of the outline Construction Traffic Management Plan [REP5-041] includes a requirement to carry out pre-construction condition surveys and reinstatement works. The Applicant's view is that this is sufficient to address the concern that has been raised.
- 7.2.16 **Post hearing submission:** the Applicant further notes that the paragraph 7 of the Local Highway Authorities Protective Provisions [AS319] make provision for the inspection by the relevant local highway authority of the highway works.
- 7.2.17 Ms Rhodes explained that CCC's concern is that Article 9, 11 and Schedule 2 to the draft DCO, and potentially the side agreement or protective provisions, are all interlinked and go back to Article 9. In CCC's submissions and response to the ExA's second written question 2.9.10 [REP5-079] it said that Article 9(1)(b) needs to refer also to Part 1 of Schedule 6 (*Public Rights of Way*) and not just Schedule 5 (*Alteration of Streets*). Otherwise, public rights of way are not swept up with the restoration and reinstatement provisions that this Article deals with.
- 7.2.18 Mr Turney responded that this would expand the rights that the undertaker would have under the Order to interfere with those rights of way, as it takes what is otherwise a right that is constrained to altering the layout of streets and expanded

¹ This is noted as Article 11(3) in CCC's submission, but Mr Mohamed confirmed this should read Article (3).

it to include any rights of way that the undertaker might want to interfere with for the purposes of ensuring appropriate mitigation is provided. This is in effect a suggestion that the Applicant expands the power to address the mitigation, which is counterintuitive and is not something that the Applicant actually requires. The preferred way to deal with this is to make it clear in the Construction Environmental Management Plan, if it is not already clear, the need to make good any impact on those rights of way that we cross. Ms Rhodes responded to acknowledge the Applicant's point as CCC wouldn't want to see an expansion of powers relating to public rights of way, but the critical point is that rights of way are highways so equally need to have the same level of protection that other highways like roads have. Ms Rhodes suggested that it may be more appropriate to add something in simply relating to the restoration of rights of way similar to Article 9 but specifically relating to Article 11, even if it is already in the Construction Environmental Management Plan. Mr Turney confirmed that the Applicant would add an equivalent of Article 9(3) in as Article 11(8) as part of the next update to the draft DCO. The ExA asked the parties to agree the form of wording offline to be included in the next version of the draft DCO.

- 7.2.19 Mr Bedford KC noted that SCC has a separate point about Article 9 that is likely to fall away if the side agreement is concluded, but currently Article 9(1), which authorises the alteration of layout of works in a street as specified in Schedule 5, does not include a requirement for consent for those works under Article 9(1). Whereas Article 9(2) relates to locations in any streets outside of the Schedule, with the safeguard in Article 9(4) that requires the consent of the street authority. SCC is concerned that the level of detail in Schedule 5 is insufficient for these works to be undertaken without the consent of the street authority, as Schedule 5 only details the location of any works and a description of them within a hatched area, but it doesn't include the specification or other detail about the alternation to the layout of the streets. SCC's view is that if the side agreement doesn't deal with this matter, it would like to see the control in Article 9(4) also apply to the power in Article 9(1).
- 7.2.20 Mr Turney confirmed that the Applicant understands this position, but that this does not necessitate a change to Article 9(4) as it will be secured in paragraph 3 of the protective provisions and it is in the side agreement that is coming forward. Mr Bedford KC noted that SCC thinks depending on the nature of the access improvement, part of it may be on land that is not intended to be part of the highway but there is still an interaction with the highway. SCC will take this away and reflect on it. Mr Turney explained that this is a very well precedented article including in the Great Yarmouth River Crossing Order 2020.
- 7.2.21 **Article 11 (Temporary stopping up of public rights of way):** The ExA summarised that CCC request that Article 11 is amended to make it clear that the powers in Article 11(1) relating to temporary stopping up of any public right of way would be only as a "last resort" in accordance with the detailed Construction Traffic Management Plan to be approved under Requirement 16. Mr Turney noted that the overarching point on the Councils' comments to the Street Works articles is that the side agreement will give further controls and authority from the relevant highways authorities for the works anticipated. With regards to the specifics of drafting the DCO, the phrase "last resort" is not appropriate drafting and the

language doesn't have any relevant precedent in other DCOs that the Applicant has seen.

- 7.2.22 Mr Turney noted that the better controls for these issues are in the Construction Traffic Management Plan, which is where any drafting amendments should be focused. The CTMP makes provision at paragraph 6.3.10 for managed crossing for public rights of way users so that the interference with the public rights of way can be mitigated during the construction phase. This will ensure that, where there is an interaction with a construction route or area, it can be managed through having a proper crossing point rather than through avoiding the public right of way altogether. This is not moving towards a last resort but is saying that the actual impacts are acceptable as they can be managed.
- 7.2.23 The ExA summarised the Applicant's position that the Construction Traffic Management Plan should be capable of addressing CCC's concerns regarding Article 11(1) and (3), recognising closure would only be of a last resort but in effect passage would be managed through provisions in the that plan. Ms Rhodes noted that CCC proposed additional amendments to CTMP as part of response to 2.9.10 that it does not yet think it has had a response to. The ExA queried whether CCC is saying it is content for these issues to be dealt with under the Construction Traffic Management Plan, or if it is reserving its position at this point. Mr Mohamed confirmed that CCC is comfortable with this being dealt with in the Construction Traffic Management Plan, subject to the wording it has suggested being considered and agreed.
- 7.2.24 **Post-hearing submission:** the Applicant has considered precedent for the phrase "last resort" in other made DCOs and there is no precedent in the operative provisions of any other DCOs. The only example is within the protective provisions at Schedule 9 to the Able Marine Energy Park Development Consent Order 2014, which given the date of that DCO does not provide good precedent to include drafting that is commonly accepted to not meet good legislative drafting standards in this DCO. In any event, the Applicant has updated the Construction Traffic Management Plan to make it clear that closure of public rights of ways will only be as a last resort and this has been submitted at Deadline 7. The Applicant has responded to CCC's proposed amendments in its Response to other parties Deadline 5 submissions **[REP6-036]** and has accepted the amendments where possible in the updated Construction Traffic Management Plan, see in particular paragraphs 6.3.4 and 6.3.10.
- 7.2.25 **Article 18 (Compulsory acquisition of land):** The ExA referenced SCC's comments about the scope of the compulsory acquisition power in Article 18(1) if maintenance is required post decommissioning, particularly in the context of Requirement 10(4) requiring the maintenance of offsetting habitat provision for stone curlews during decommissioning works. The issue that has been identified is whether it is appropriate for the compulsory acquisition powers in Article 18(1) to empower works in the post decommissioning environment should they be imposed on the undertaker.
- 7.2.26 The ExA asked whether SCC is contemplating a change to Article 18(1) itself. Mr Bedford KC confirmed that SCC is not as their view is that the breadth of the power in Article 18(1) is sufficient to enable the undertaker to undertake post

decommissioning management or maintenance of whatever feature had been acquired.

- 7.2.27 Mr Bedford KC noted there is a wider issue being discussed that may circumvent the need to discuss the detail of this, but that SCC understands that the Applicant is not adverse to the principle of there being a mechanism for the regulation of the post decommissioning environment but that would only be for those parts of the mitigation works that are identified as having a valuable purpose and ought to be retained in the post decommissioning environment. SCC is not precious as to the mechanism to deal with this, and there has been mention of adjusting the outline Landscape and Ecology Management Plan **[REP5-013]** or the Framework Decommissioning Environmental Management Plan **[REP5-008]**, or an alternative mechanism could be put in place such as a s106 planning obligation relating to the relevant land and tied the landowner to ongoing management.
- 7.2.28 SCC envisages that the Decommissioning Environmental Management Plan could set out a regime, which is secured by Requirement 22 of the DCO, and this includes a review mechanism that would identify those features that are of value and should be retained following the decommissioning works. This would mean that the Decommissioning Environmental Management Plan would continue to bite, but it could include the ability for the ongoing requirements of the Decommissioning Environmental Management Plan to be discharged if they were replaced by a suitable alternative, which could be a section 106 agreement or similar.
- 7.2.29 Mr Turney confirmed that Applicant's position is that this should not be a measure in the Landscape and Ecology Management Plan and, in any event as a point of principle, the undertaker should not be compelled to compulsorily acquire land at this stage in anticipation that it may serve a continuing purpose for ecological or landscape reasons when the Scheme has been decommissioned. It was confirmed to the ExA that this is in reference to land within the Order limits only.
- 7.2.30 Mr Turney explained that the proposal the Applicant is developing is broadly as Mr Bedford KC describes in that the Decommissioning Environmental Management Plan will include an obligation to report on the features and measures that were secured through the original Landscape and Ecology Management Plan and identify what, if any, continuing value they would have without the Scheme. For example, there will be hedges that serve no purpose other than to mitigate the view of solar panels and following the operational period their absence would not be a concern, but there may be other areas where their retention has a broader value. The position currently adopted in the Framework Decommissioning Environmental Management Plan is that the undertaker in removing the infrastructure and remediating the site will not strip out any of those mitigation measures. However, the Applicant acknowledges that amendments should be made to the Decommissioning Environmental Management Plan to deal with the environment once decommissioning has taken place.
- 7.2.31 Mr Turney explained that the Applicant proposes a process of assessment and consideration of which features should be retained in the long term and then through the approval of the Decommissioning Environmental Management Plan process it will identify how long-term retention can be secured. This will all be conditional on the authority being satisfied that it can retain the interests it wishes

to in the long term through some measure, such as a s106 agreement, a conservation covenant or the exercise of statutory powers by the authority.

- 7.2.32 Mr Turney summarised the Applicant's proposal as being to use the DCO at this stage to secure the requirement for the undertaker in 40 years time, as part of the Decommissioning Environmental Management Plan, to identify the measures it proposes are retained in the long term and how it is suggested these are secured. The Council must be satisfied in discharging the Decommissioning Environmental Management Plan pursuant to Requirement 22 that those measures are appropriate. If the Council is not satisfied of this, it will not approve the Decommissioning Environmental Management Plan. The Applicant wants to avoid a situation where at the tail end of the DCO the landowner is obligated to retain in perpetuity a hedge, but in a situation where the powers to maintain or lop and fell have fallen away and failure to comply with the Decommissioning Environmental Management Plan would be a criminal offence. The proposal is to address any long term retention outside the DCO.
- 7.2.33 Mr Bedford KC confirmed that SCC is not in principle adverse to proceeding in this way, but that a safeguard needs to be drafted into Requirement 22. This amendment should expand the content of the relevant plan to be submitted as part of the Decommissioning Environmental Management Plan to ensure it adequately deals with this measure and to explain that the default position would be criminal liability for breaching this requirement. This would provide the teeth that ensure that suitable alternative replacement measures are put in place.
- 7.2.34 The ExA queried whether SCC will provide the proposed amendment, but Mr Turney confirmed that the Application does not consider that Requirement 22 needs amending as the best place would be to deal with this in the framework Decommissioning Environmental Management Plan that will be updated at Deadline 7.
- 7.2.35 Mr Mohamed confirmed that ECDC's view is that the Decommissioning Environmental Management Plan would be the best place to deal with this issue in the circumstances and it is important to make sure the plan is clear on the approach so that there isn't any ambiguity.
- 7.2.36 **Post hearing submission:** revised wording has been added to the framework Decommissioning Environmental Management Plan submitted at Deadline 7 to secure a mechanism to consider the retention of landscape and ecological measures where they retain function after decommissioning has taken place.
- 7.2.37 This text includes the following obligations upon the undertaker:
- a. to prepare a schedule of all landscape and ecological mitigation and enhancement measures put into place by the Scheme. The undertaker will not remove any of those measures;
 - b. to further identify measures that continue to have a landscape or ecological function after decommissioning (and also those measures which do not); and

- c. to put forward proposals that might secure the long term retention, for a period 25 years, of those measures after decommissioning.

7.2.38 In addition, the detailed Decommissioning Environmental Management Plan will include text:

- a. which acknowledges that there is no requirement to retain any grassland planting;
- b. A statement that where owners and successors in title of land subject to the Decommissioning Environmental Management Plan fell, lop or remove grassland or any of the measures referred to above it will not be a breach of the Decommissioning Environmental Management Plan.

7.2.39 The principle underlying the proposals set out above is that the Applicant will secure leases over the land for the main sites. At the end of the terms of those leases the land will revert to the freehold owner. On this basis it is not possible now for the Applicant to commit to retain landscape and ecological measures, even where it retains function, once decommissioning has been undertaken as it will no longer retain an interest in the land to secure this. However, the wording proposed in the Decommissioning Environmental Management Plan means that the undertaker is committed to trying to secure proposals to retain those measures which continue to have landscape or ecological function once the Scheme is decommissioned.

7.2.40 The Applicant has consulted SCC, CCC and ECDC on the proposed wording. The wording included in the Decommissioning Environmental Management Plan at Deadline 7 is not agreed, but is as far as the Applicant considers it can go for the following reasons:

- a. SCC seeks the removal of the wording referring to the fact that grassland need not be retained. They argue that can be determined at the point the detailed Decommissioning Environmental Management Plan is approved. However, from the Applicant's perspective there is no justification for the grassland to be retained an indeed would conflict with the intention for the land to be reverted to agricultural use after decommissioning;
- b. SCC want there to be more certainty over how the long term retention of measures will be secured. The Applicant cannot accept that position at this stage. It is dependent on coming to agreement with the relevant landowners/land interests at the time and is not something it can agree to without having agreed the acceptability of proposals with those persons. The proposals to seek to address long term retention of areas of landscape or ecological value goes beyond the requirement on any other NSIP solar farm developer that the Applicant is aware of, and it would be inappropriate to require long term retention of any particular features in circumstances where the measures in the Decommissioning Environmental Management Plan and

the terms of the DCO will secure the restoration of the land at the end of the life of the project; and

- c. CCC/ECDC go further than SCC and seek the retention of all ecological mitigation, compensation and enhancement. This is not acceptable. There is no justification to retain all ecological mitigation, compensation or enhancement once the Scheme has been removed. Clearly, if there is some additional residual function being achieved then there is a greater argument for this and the Applicant has acknowledged this with its proposed amendment to the Decommissioning Environmental Management Plan.

- 7.2.41 **Article 27 (Temporary use of land for constructing the authorised development):** Mr Mohamed explained ECDC's concern about the scope of and need for the power to remove vegetation pursuant to 27(1)(b) in the context of Article 36 and 37. Requirement 6 requires the undertaker to take into account the Arboricultural Impact Assessment [REP5-052] or updated tree surveys where not survey already as part of the preparing the detailed design. ECDC would like more certainty in the Requirement as to what trees will require works so that other powers under Article 36 and 37 and the removal of vegetation pursuant to 27(1)(b) are not necessary.
- 7.2.42 Mr Bedford KC confirmed that SCC has no comments on this article and Ms Parekh confirmed that WSC takes on board ECDC's comments. Ms Parekh noted that with regards to Article 27(1)(b) if the power to use land temporarily to remove vegetation remains, but WSC would like to see additional wording that already appears at Article 36(2)(d) to avoid breach of Habitats and Species Regulations 2017 and Wildlife and Countryside Act 1981.
- 7.2.43 The ExA asked the Applicant whether there will be any more information on the specific works to trees and vegetation that will amend the powers sought under the DCO. Mr Turney confirmed that nothing further will be coming forward on this before the end of Examination, but the Applicant will take away WSC's point, which is a slightly different point to ECDC's, and consider it when updating the draft DCO. Mr Turney noted that when considering the Councils' comments it is important to understand what function Article 27 is performing, as it isn't authorising trees being chopped down rather it is authorising the undertaker to use someone else's land to chop down trees. It is therefore not a 'works' power, that gives consent for the removal of vegetation, it is simply setting out the extent of the land powers (analogous, for example, to alteration provisions in a lease).
- 7.2.44 When considering the need for the Articles ECDC has referred to, Mr Turney explained that the provision of any Arboricultural Impact Assessment or any tree surveys at the detailed design stage cannot obviate the need for statutory authority to fell or lop the trees, so the powers at Article 36 and 37 are an essential part of the Order and cannot be deleted. The ongoing need for these powers during the operational period arises as works to trees in the future may be required if, for example, trees become a danger to those carrying out the authorised development. There are further controls in the Construction Environmental Management Plan that deal with some of the concerns that Mr Mohamed has raised.

- 7.2.45 The ExA noted SCC's concern that the Applicant has included in Article 36(2)(b) the wording "except for where not practically possible" and that this should be deleted. Mr Bedford KC confirmed SCC's position and its concern that this removes the rigour of having to comply with the codes or standards, as the codes themselves accept the practicality of doing this. Mr Turney noted that the Applicant will check the provisions in the relevant British Standards to see whether they provide the comfort to remove this wording.
- 7.2.46 **Post-hearing note:** the Applicant has considered this and it will remove the wording "except for where not practically possible" in the next update of the draft DCO.
- 7.2.47 Ms Parekh noted that the power in Article 37 is too broad, whereas the power to remove hedgerows in Article 36(4) is for the purposes of constructing the authorised development only and that anything beyond that is too broad. WSC requests that the scope of the power in Article 37 should replicate the scope of the power in Article 36(4) so that it is limited to felling or lopping of TPO trees necessary for construction only as anything beyond that is too wide. The ExA requested that WSC provides the drafting amendments it would like to be included. Mr Turney confirmed the Applicant will take this away to consider whether the power should be constrained to construction only by deleting the words 'maintenance and operation' from Article 37(1). **Post hearing note:** the Applicant can confirm that this will change will be made in the next iteration of the DCO.
- 7.2.48 **Article 44 (Traffic regulation measures):** The ExA noted that this Article is agreed except for an outstanding comment from SCC about what is meant by a local advertisement notice at Article 44(5) as it should say "local newspaper advertisement". Mr Turney confirmed that the Applicant will make this change in the next update of the draft DCO.

7.3 Schedule 2, Requirements

- 7.3.1 **Requirement 6 (Detailed design approval):** The ExA summarised CCC's position in its response to the Examining Authority's Second Written Question 2.9.12 asking for Requirement 6(1) to be updated to require pre-commencement condition surveys to be completed of all public rights of way and cable route crossings. Mr Turney explained the Applicant's position that this is not needed for Requirement 6 as it is dealt with in the Construction Traffic Management Plan. Mr Mohamed confirmed that ECDC will take this away and consider whether the Construction Traffic Management Plan addresses its concerns.
- 7.3.2 Ms Parekh confirmed that WSC wants Requirement 6 to include requiring the design to be in compliance with the Environmental Colour Assessment. There have been discussions with the Applicant on this and the Outline Landscape and Ecology Management Plan [REP5-013] has been updated to including wording about ensuring the colours of the structure reflects the landscape, but the Landscape and Ecology Management Plan may come forward after the detailed design, so WSC wants to ensure it is properly considered as part of Requirement 6. The ExA queried whether this would be considered by Requirement 6(1)(d) 'external structures'? Ms Parekh confirmed that it would be in general terms, but consideration is needed as to whether this is specific enough so WSC would like

to find a pragmatic way to resolve this issue. Mr Turney confirmed that this is fine and it may be within the design principles so the Applicant will consider this further.

7.3.3 **Post hearing note:** the Applicant will add the Landscape and Ecology Mitigation Plan to Requirement 6(2) in the next update of the draft DCO so that the detailed design must accord with the provisions of the plan.

7.3.4 **Requirement 10 (Stone curlew):** The ExA noted that WSC has made comments on this requirement in REP5-101 regarding the maintenance of the stone curlew offsetting habitat beyond the decommissioning works. It was discussed that this has already been covered earlier in the hearing (see paragraphs 7.2.24 to 7.2.37 of this note). Ms Parekh noted that some of WSC's concerns have been resolved by the earlier discussion, but there is the separate point of a contingency fund for the stone curlew provision to be provided as a last resort. Ms Parekh explained that there are two reasons this is required:

- a. to account for a situation where the objectives for the offsetting land are not met, which is a risk as there are constraints on archaeology in that area; and
- b. it is difficult and challenging in practice to secure suitable mitigation land outside of the Order limits because of the various criteria that need meeting, so the contingency fund would be as a last resort if an alternative approach is required.

7.3.5 The ExA queried how the contingency fund would work in practice and how it would relate to the DCO. Ms Parekh confirmed WSC's position is that it would prefer to see a contingency plan than a fund, but that it understands in other similar applications there is offsetting land identified as back up land in case the preferred approach fails.

7.3.6 Mr Turney noted that there is adequate provision already in the Outline Landscape and Ecology Mitigation Plan and the draft DCO for the stone curlew offsetting habitat to be provided. One particular element of this is the Ecology Advisory Group that will be set up to provide oversight in respect of the measures that may be required to achieve the biodiversity objectives, including in respect of stone curlew. This includes consideration of whether the measures have been effective or further measures are needed, but if this needs further expanding as a contingency approach then this can be achieved in the Landscape and Ecology Mitigation Plan and WSC rightly recognises this might not be a fund or on the face of the DCO.

7.3.7 **Requirement 23 (Crash site exclusion area):** The ExA queried the timing of the licence referred to under this Requirement and whether it would be helpful for it to be more simply expressed to commit to the potentially expanded crash site exclusion area if the appropriate licence is granted, and if there is an update on when that is likely to be granted? Mr Turney confirmed that the application has been submitted and the Applicant hopes to confirm whether it has been granted or not by the end of the Examination. The Applicant does not have any previous experience of this application process, but when the application was received it was commented that the Applicant has provided sufficient information that goes beyond what a lot of other applications have provided in the past. The Applicant's intention is that this provision should establish a sound means of reflecting the

obligation intended in the draft DCO and provides for the two alternatives of either there being a licence or there not being a licence.

7.3.8 Ms Rhodes noted that CCC has a concern with the reference to “must be on a highway” in Requirement 23(5)(a) in relation to the bomber crash site interpretation scheme. CCC expected it to be on the permissive path within parcel E05 Order limits rather than on the highway, which comes down to the point about how it is retained in perpetuity as CCC would prefer the permissive path to be dedicated as a highway. However, CCC understands from the Applicant that the s106 agreement cannot provide money for the creation of public rights of way within the Order limits due to the terms of the land agreements. Mr Turney confirmed that this wording will be deleted from Requirement 23(5)(a) as it will not be on a highway and it will instead be on a permissive path that provides a circulate route around parcel E05, but that the Applicant will not commit to dedicating that path. Further thought is required about what will happen post decommissioning.

7.3.9 **Post hearing submission:** the Applicant has considered this position further and due to the nature of the land rights being secured the bomber crash site memorial will be removed from the permissive path adjacent to E05 following decommissioning, unless the landowner voluntarily agrees to the dedication of the path. If the landowner does not agree, the Applicant will move the memorial elsewhere in an appropriate location to be agreed with ECDC and WSC, who will consult the relevant Parish Council.

7.3.10 Following this hearing (IHS4) the Outline Landscape and Ecology Management Plan submitted at Deadline 7 has also been updated with regards to the memorial and its landscaping associated with the crash site and the Applicant will consider whether any drafting amendments are required to Requirement 23 in the draft DCO as a result of these updates. The framework DEMP will provide for the memorial to be moved elsewhere following decommissioning.

7.4 Other Schedules

7.4.1 **Schedule 5 (*Alteration of streets*):** Ms Rhodes explained CCC’s view that it is not clear from Schedule 5 which streets are private and public and it would like to see an additional column added to address this. Mr Turney confirmed that the Applicant is happy to provide this information in Schedule 5, but that a new column is not necessary as it can be provided within the existing table. Ms Rhodes confirmed this is fine as long as it is clear.

7.4.2 **Schedule 12 (*Protective provisions*):** Mr Turney confirmed that the Applicant would provide an update on negotiations in its post hearing written summary.

7.4.3 **Post hearing submission:**

Agreed and final form protective provisions:

7.4.4 **Anglian Water (agreed):** The protective provisions were agreed between the parties in August 2021 and are contained in Part 3 of Schedule 12 to the Sunnica DCO.

7.4.5 **Cadent Gas Limited (agreed):** The undertaker’s legal team has been in regular correspondence with Cadent’s lawyers since February 2021 and the parties have

reached agreement in October 2022 and are contained in Part 4 of Schedule 12 to the Sunnica DCO.

- 7.4.6 **Eastern Power Networks and UK Power Networks (agreed):** The protective provisions in the draft DCO submitted with the Application were agreed by the parties on 9 June 2021 and are contained in Part 7 of Schedule 12 to the Sunnica DCO.
- 7.4.7 **National Highways (agreed):** Sunnica's legal team has been in discussions with Highways England's (now National Highways) lawyer since June 2021 to discuss protective provisions. The parties reached agreement on the protective provisions in October 2022 and the agreed form protective provisions are in Part 9 of Schedule 12 to the Sunnica DCO.
- 7.4.8 **Swaffham Internal Drainage Board (agreed):** Sunnica's environmental consultants shared draft protective provisions with Swaffham Internal Drainage Board in July 2021, and lawyers for the parties are now in contact to negotiate the protective provisions and consent for the disapplication of legislation. Swaffham IDB's lawyers confirmed in October 2022 that the proposed approach for disapplying the legislation is agreed, and the protective provisions are agreed and in Part 8 of Schedule 12 to the Sunnica DCO.
- 7.4.9 **Environment Agency (agreed):** The protective provisions were agreed in February 2023 and the agreed version will be included in the next update of the Order.
- 7.4.10 **East of England Ambulance Service NHS Trust (agreed):** protective provisions have been agreed between the Applicant and EEAST and were included at Part 11 to Schedule 12 of the updated version of the draft DCO submitted at Deadline 4.
- 7.4.11 **HPUT A Limited and HPUT B Limited (agreed):** the Applicant's and HPUT's lawyers have been negotiating protective provisions since December 2023 and reached agreement on the final form of the provisions in February 2023. An earlier draft was included in Part 12 or Schedule 12 of the draft DCO submitted at Deadline 6 and this will be updated to reflect the final agreed version when the next DCO is submitted.
- 7.4.12 **Suffolk County Council as LLFA (agreed):** the Applicant's legal team has been in correspondence with the Council and its legal team to negotiate the protective provisions. The parties confirmed the protective provisions are in agreed form in February 2023.
- 7.4.13 **South Staffordshire Water ("SSW") (agreed):** the Applicant's legal team contacted SSW's legal team in May 2022 following receipt of its Relevant Representation. The parties agreed the protective provisions in March 2023 and the agreed version will be included in the next update of the draft DCO submitted into Examination.

Not yet agreed:

- 7.4.14 **National Grid Electricity Transmission plc and National Grid Gas plc (in progress):** The undertaker's legal team has been in contact with National Grid's (jointly NGET and NGG) lawyers to negotiate protective provisions since March 2021. Substantive negotiations commenced in around July 2021 and are currently ongoing and at an advanced stage – the undertaker's legal team responded with comments on the PPs on 24 August 2022 and are awaiting a response from NGET's and NGG's lawyers. NGET and NGG's lawyers sent updated drafts in February 2023 and these are substantially agreed.
- 7.4.15 **Network Rail (in progress):** The undertaker's legal team contacted Network Rail in January 2021 in relation to protective provisions and Network Rail has recently responded with further comments. Negotiations are ongoing and at an advance stage. The undertaker will continue to progress negotiations and aims to reach agreement prior to the end of Examination. Network Rail's lawyers sent updated draft PPs and Framework Agreement in February 2023 and these are substantially agreed save for one point.
- 7.4.16 **Cambridgeshire County Council as LLFA (in progress):** the Applicant's legal team and the Council's legal team have been negotiating protective provisions and have reached agreement on most points. The Applicant returned comments on 14 December 2022 and confirmed that it would not update the protective provisions in the draft Order until they have reached agreement. The Applicant followed up for an update on 8th February 2023 and is awaiting confirmation that the protective provisions are agreed and the Council consents to the disapplication of s23 Land Drainage Act 1991.
- 7.4.17 There are eight other utility providers (seven telecommunications companies, and one electricity undertaker (Lightsource)) that the Applicant has been in contact with. Of those, Vodafone and Virgin have confirmed that its assets are not affected by the Scheme. A substantive response is awaited from the other seven, however, standard PPs are included in the draft DCO providing appropriate protection should those parties have assets within the Order limits (provisions for the protection of electricity, gas, water and sewerage undertakers in the draft Sunnica DCO in Part 1 of Schedule 12; standard telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12). We can provide an update for those companies individually if that assists:
- 7.4.18 **Lightsource SPV 115 Limited:** The Applicant has been in correspondence with the land interest since March 2019. There have been meetings held in February and March 2021, although a substantive response is awaited as to whether any protective provisions are necessary. In any event, the Applicant has included standard provisions for the protection of electricity, gas, water and sewerage undertakers in the draft Sunnica DCO in Part 1 of Schedule 12. It has since been confirmed that the Lightsource SPV 115 Limited cable has been adopted by UK Power Networks (UKPN). Please see the entry for UKPN so covered by UKPN's PPs.
- 7.4.19 **Virgin Media Limited:** The Applicant has been in correspondence with the land interest since March 2019, with further correspondence in June 2019, July 2020, December 2020 and August 2021. Virgin has confirmed that they have no interests within the Scheme limits. In any event, the Applicant has included standard

telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12.

- 7.4.20 Vodafone Limited and Energis Communications Limited (acquired by Vodafone in 2005): The Applicant has been in correspondence with the statutory undertaker and their agents since March 2019. The Applicant has sought to confirm whether any apparatus is affected and whether protective provisions are required. Draft protective provisions were provided on 4 February 2021 and a meeting was held on 19 February in relation to interaction with Vodafone assets. The outcome of that meeting was that Vodafone did not consider its assets would be affected by the Scheme.
- 7.4.21 Openreach Limited and BT Group plc: The Applicant has sent correspondence to Openreach Limited/BT Group plc in order to seek their confirmation of whether they approve of the inclusion of the standard protective provisions. The Applicant has sent emails on 10 February, 17 February, 5 March, 13 May 2021 and 14 October 2022. A substantive response is still awaited. In any event, Sunnica has included standard telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12.
- 7.4.22 GTC Pipelines Limited: The Applicant has been in correspondence with the land interest since June 2019. The Applicant has issued multiple Requests for Information (RFIs) to confirm interests within the land. Whilst a substantive response is awaited as to whether any protective provisions are necessary, the Applicant has included standard provisions for the protection of electricity, gas, water and sewerage undertakers in the draft Sunnica DCO in Part 1 of Schedule 12.
- 7.4.23 Airwave Solutions Limited: The Applicant issued a Request for Information (RFI) on 16 September 2020 so that the landowner's interests within the land could be confirmed. Whilst a substantive response is awaited, the Applicant has, in any event, included standard telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12.
- 7.4.24 Interoute Communications Ltd: Despite efforts from the Applicant. Interoute confirmed via email on 15/02 that their assets did not stand to be affected. The Applicant has, in any event, included standard telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12.
- 7.4.25 CityFibre Limited: Despite efforts from the Applicant. CityFibre responded to say they don't believe their assets are affected on 15/02/2021. The Applicant has, in any event, included standard telecommunications protective provisions in the draft Sunnica DCO in Part 2 of Schedule 12.
- 7.4.26 **Schedule 13 (*Procedure for discharge*):** The ExA confirmed that both WSC and ECDC have proposed a fee schedule in identical form that sets out the various fees. Mr Mohamed noted that the District Councils have agreed that the maximum fee for discharging Requirement 6 (detailed design approval) of £300,000 should be split so it is £150,000, but that this hasn't been agreed with the Applicant yet.
- 7.4.27 Mr Turney explained the Applicant's position that it does not agree with the proposed fee schedule as it is based on the Sizewell C (Nuclear Generating

Station) Order 2022, which is not comparable to the Sunnica Energy Farm project. The Applicant also considers that using the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 is a helpful starting point, but that it does not set the fees at the right level for a Nationally Significant Infrastructure Project which is at an inherently different scale to the type of fees usually calculated under those Regulations. Mr Turney noted that the two previous made solar DCOs, the Cleve Hill Solar Park Order 2020 and Little Crow Solar Park Order 2022, did not include a fee schedule for the discharge of requirements and the Secretary of State found that to be an acceptable position. Notwithstanding that, the Applicant is willing to agree to pay an acceptable level of fees to the Councils and is continuing negotiations with the Councils on this.

- 7.4.28 The ExA asked the Councils to think about what would be the proper and appropriate amount that could be agreed to be included in the Order.

Appendix A Sunnica 550-575w

Appendix A

In the Issue Specific Hearing dated 16 February 2023 the Ex A asked that the Applicant consider whether technological improvements to the efficiency of PV panels could enable a reduction in the size of the Scheme whilst maintaining the output.

The layout for the DCO submission documents were completed using a 550Wp panel type. Since the application for development consent was submitted in November 2021, there have been incremental efficiency and optimisation improvements meaning that a slightly larger and more efficient 575W panel has become available in the market that would fit within the maximum dimensions set out in the Design Principles [REP6-037] and which have been subject to environmental impact assessment. The panel size is slightly bigger in format and the efficiency is slightly greater. These can produce a saving of 0.93ha/MWp versus 0.96ha/MWp.

The table below sets out an estimated installed power capacity by field and overall using a 550Wp module/ panel, a 575Wp module/ panel and the difference between a 550Wp and 575Wp module/ panel. The differences on a field-by-field basis are relatively small overall but the total difference across all the fields can make a significant difference.

Table 1 Installed capacity by field for 550Wp and 575Wp panel types and the difference between them on a field-by-field and overall basis

	FIELD	550 Wp	575 Wp	Difference
	W01	9.76	10.21	0.45
	W02	13.09	13.69	0.60
	W03	27.89	29.16	1.27
	W04	26.66	27.87	1.21
	W05	32.93	34.42	1.49
	W06	25.75	26.92	1.17
	W07	26.75	27.97	1.22
	W08	17.71	18.52	0.81
	W09	9.64	10.08	0.44
	W10	15.83	16.55	0.72
	W11	14.80	15.47	0.67
	W12	20.73	21.67	0.94
	W15	50.17	52.45	2.28
	E01	12.97	13.56	0.59
	E02	1.37	1.43	0.06
	E03	19.10	19.96	0.86
	E04	12.43	12.99	0.56
	E05	41.61	43.50	1.89
	E08	6.18	6.46	0.28
	E09	7.84	8.19	0.35
	E10	11.66	12.19	0.53
	E12	39.70	41.51	1.81
	E13	14.08	14.72	0.64
	E14	8.21	8.58	0.37
	E15	7.88	8.24	0.36
	E16	8.07	8.44	0.37
	E17	7.62	7.97	0.35
	E18	5.81	6.07	0.26
	E19	15.79	16.50	0.72
	E20	10.44	10.92	0.48
	E21	9.47	9.90	0.43
	E22	6.10	6.38	0.28
	E24	7.81	8.16	0.35
	E25	6.38	6.67	0.29
	E26	4.90	5.12	0.22
	E27	6.21	6.49	0.28
	E28	5.36	5.60	0.24
	E29	7.02	7.34	0.32
	E30	17.08	17.85	0.77
	E31	28.51	29.80	1.29
	E32	4.60	4.81	0.21
As per original DCO submission	TOTAL MWp	626	654	28
Remove W01, W02, 3.5ha from W04 and E05	TOTAL MWp	600	627	27
Remove W01-12, E05 and E12	TOTAL MWp	303	317	14
Difference overall	TOTAL MWp	323	338	15

The summary at the base of the table above demonstrates that the output between the two panel types is not sufficient to 'make up' any shortfall provided by the loss of all the fields W01-W12, E05 and E12. Fields W01 and W02 have been removed following the second changes application as they are within the zone referred to as Sunnica West A. The second changes application also assumes the removal of an additional area of owing to buried archaeology on W04 and the area known as the crash site on E05 these areas are assumed to result in a combined total of 3.5 ha and an estimated loss of 1MW per ha across all scenarios. The result would be a total installed capacity of ~317MWp overall using the 575Wp panel if all those fields were removed. This would not result in an optimal use of the 500MW grid connection.

There are incremental efficiency gains being made in solar PV technology that improves the output of a given panel without needing more materials or greater area. Panels larger than 575Wp are currently available in the market. However, these are not materially more efficient in terms of being able to produce more electricity per area (m2) than the 575Wp panel chosen but rather they have a larger format in terms of dimensions (m2). The Design Principles is the basis upon which the Environmental Impact Assessment has been undertaken and the use of these larger format panels would not be

possible at an optimal angle within these constraints. While larger panels could potentially be installed, they would need to be installed at a shallower angle to fit within the top end height and the overall production per ha that would result would be lower than using a smaller panel type thereby negating any benefit. Moreover, the greater the format size of panel the less flexible the layout can be to real-world irregularities. As a result, it is likely that further installed capacity losses would occur where rows could not be completed to fit with the field shape owing to the larger format.

There are innovative technologies undergoing research and development such as the use of perovskite solar cells that can produce high levels of efficiency for low production costs and result in the type of step-change that would be needed to remove some fields and still get an output close to that required to keep the site optimal. However, there remain a set of challenges including the major challenge of achieving long-term performance stability at the individual module level and in the outdoor and real-world setting before this can become a viable commercial technology and these challenges are unlikely to be overcome between now and when the final design for the project and the procurement process is initiated.