



A wide-angle photograph of the Oaklands Farm Solar Park. The foreground is a lush green field. In the middle ground, a long row of solar panels is mounted on wooden posts, stretching across the frame. To the right, there is a fence and a gate. The background features a line of trees with autumn foliage and a clear blue sky with scattered white clouds. Power lines are visible in the distance.

# OAKLANDS FARM SOLAR PARK

Applicant: Oaklands Farm Solar Ltd

The Written Summary of the Applicant's Oral Submissions at Issue  
Specific Hearing 1

October 2024

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# Written Summary of the Applicant's Oral Submissions – ISH1



This note summarises the submissions made by Oaklands Farm Solar Limited (the “Applicant”) at the Issue Specific Hearing on 22 and 23 October 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant. Summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant’s submissions.

## 1 ISSUE SPECIFIC HEARING

### Agenda Item 3 – Drainage and Flooding

- 1.1 The Applicant was asked by the Examining Authority to demonstrate there were no reasonable alternatives to culverting for access and whether the culverts would only be in place temporarily for the construction period.
- 1.2 The Applicant confirmed that it had assessed three culvert crossings of an Ordinary Watercourse being provided for the lifetime of the Proposed Development, which the Applicant considers to be temporary as the Proposed Development is temporary. The Applicant confirmed that the culverts and other elements of the Proposed Development will be removed as part of decommissioning in accordance with the detailed Decommissioning Environmental Management Plan (“DEMP”) to be approved by the local planning authority as secured by Requirement 22 of the draft Development Consent Order.
- 1.3 The Applicant considered that the maintaining of culverts through the life of the Proposed Development will minimise the environmental disturbance of installing and removing the culverts at construction and then again at decommissioning and will also provide optionality for HGV and abnormal load access for all phases of the development (construction, operation, and decommissioning).
- 1.4 The Applicant also acknowledged that while very unlikely, emergency maintenance may be required during operations, which may require special HGV or abnormal load transport, and the Applicant considers in such a situation it may be necessary to temporarily reinstate and utilise the construction haul route across Park Farm and Fairfield’s Farm rather than utilising the surrounding road network. The Applicant confirmed that having permanent culverts in place will minimise the potential environmental disturbance of installing and removing the culverts twice.
- 1.5 The Applicant was asked by the Examining Authority whether it is possible to carry out maintenance activities without requiring the use of the culverts and without generating significant other effects.
- 1.6 The Applicant confirmed that would be possible and that it would consider these alternatives.
- 1.7 **Action Point 3(b): Assess if compliance with paragraph 2.10.88 of the National Planning Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and the pros and cons of leaving culverts in place during the operation stage compared with removing them.**
- 1.8 **Response to Action Point 3(b): The Applicant committed to provide the Examining Authority with a document setting out the pros and cons of retaining and removing the proposed culverts post-construction and reinstating these for decommissioning. Further to the close of ISH1, the Applicant has reviewed paragraph 2.10.88 of National Policy Statement for Renewable Energy Infrastructure EN-3 and commits to removing the three (3) culverts following construction of the proposed development. This commitment is secured in**

paragraph 1.14.1 of the outline Construction Environmental Management Plan (“CEMP”) and table 4.2 of Chapter 4 Project Description of the Environmental Statement. The culverts will be required to be reinstated to enable decommissioning of the Proposed Development, and thereafter removed. This commitment is secured in paragraph 3.1.2 of the outline DEMP and table 4.2 of Chapter 4. The Applicant therefore has not provided a list of pros and cons relating to permanent versus temporary culverts at Deadline 5.

- 1.9 The Applicant was asked by the Examining Authority to comment on whether its Flood Risk Assessment (“FRA”) complies with the Sequential Test as set out in National Policy Statement for Energy (“NPS EN-1”).
- 1.10 The Applicant confirmed it was confident the FRA satisfies NPS EN-1 particularly with the updates made at Deadline 4. The Applicant acknowledged the Environment Agency’s comment that the watercourses through the site have been modelled in detail and the culverts have been inserted and updated to allow the free board to the soffit level as described. The Applicant confirmed this detail would be formally submitted to the Examination at Deadline 5.
- 1.11 **Action Point 3(c): Submit an updated Flood Risk Assessment.**
- 1.12 **Response to Action Point 3(c): The Applicant has submitted an updated FRA as part of its Deadline 5 submissions. The updated FRA includes updated flood risk modelling and was prepared on the basis that culverts would be retained during the operational period of the Proposed Development. As culverts will be in situ for construction of the Proposed Development, approximately 16 months, and during decommissioning, the Applicant considers the flood risk modelling to remain applicable to the Proposed Development and representative of a worst-case scenario. The final design will be submitted to the local planning authority in accordance with Requirement 5(1)(h) of the draft Development Consent Order.**
- 1.13 As regards the Sequential Test, the Applicant confirmed it had not undertaken this but that it had have sequentially tested the site. The Applicant acknowledged that the flood zone is limited to watercourse corridors and that the majority of the site falls within Flood Zone 1 with a very small area clipping into Flood Zone 2. The Applicant considered that where this clipping does occur, only a few array legs would be affected with panels themselves typically at least 600mm above ground level compared to a maximum flood depth of 300mm (including climate change allowances).
- 1.14 **The Applicant will update the FRA to address the Sequential Test at Deadline 6.**
- 1.15 The Applicant was asked by the Examining Authority to comment on the potential to add mitigation to the management plans relating to the potential for obstructions to flood waters from the build-up of debris on the panel leg supports. The Applicant confirmed that the FRA to be submitted at Deadline 5 would be updated to align with the Applicant’s commitment made thus far in both the outline CEMP and the outline Operational Environmental Management Plan (“OEMP”), which require a construction phase flood risk and drainage monitoring plan to be created by the Principal Contractor and sets out the flood risk and drainage response and maintenance requirements, including after flood events. The Applicant confirmed to the Examining Authority the management plans specifically refer to the potential for blockages due to debris and debris removal. **This detail is set out in paragraph 7.3 of the FRA, paragraph 2.6.9 of the OCEMP and paragraph 6.1.1 and table 5.1 of the OOEMP submitted as part of the Deadline 5 submissions.**
- 1.16 The Applicant was asked by the Examining Authority to comment on the uncertainties relating to the impacts of piling and cabling on land drains and potential increased flood risk. The Applicant confirmed that if land drains were damaged, it would be largely unknown. The Applicant’s consultant advised that a lot of time is spent in drainage working to slow the flow, but land drains to improve soil of the field provide a preferential flow route and run on gravity, this may, in theory, increase flood risk to off-site receptors

compared to true greenfield conditions. The Applicant advised that if the land drains were damaged during piling you may find localised soft spots, which the Applicant, within the outline CEMP, has committed to investigate if they occur. From a flow point of view, it will slow flow, encourage infiltration and the water will continue to follow topography and will not suddenly go in a different direction. The Applicant confirmed it was confident that it should be seen as a beneficial factor; together with the commitment from the Applicant within the outline CEMP and outline DEMP to put right any issues that are seen.

- 1.17 The Applicant acknowledged that the discussion was merging with the Agricultural topic to an extent and that its Agricultural Consultant had information on the drainage. The Applicant advised that the information is fairly rudimentary, but investigations have been made and the farmer knows in places there are old clay pipe drains before purchase in 1984 and there are patches where plastic drains have been put in since. The Applicant advised it had seen various maps, that were not particularly accurate, and noted that once a drain has gone underground you do not really know if it has worked unless you find outfalls and, as land drains are typically small pipes, it is only when you start noticing patches that stay wet that you realise additional piping is required. The Applicant considered that it is generally at lower parts of fields, nearer watercourses, where farmers try to speed up water flow through a land drain and that if there is any damage to the drains water flow would be slowed. The Applicant considered that the water flow is naturally going into those ditch areas. The Applicant agreed to share the information it has with the Examining Authority and confirmed that these measures will be covered in the Soil Management Plan ("SMP") as any plans showing drainage will influence cable trenches as the Applicant would not put these over drainage as on the whole drainage tends to be found when you start digging and you know where to start in advance. **The FRA submitted as part of the Deadline 5 submissions sets out information regarding land drains at section 4.2.5 and in Figure 4-4.**
- 1.18 The Applicant advised that it broadly knows where the land drains are and that several of its team had been through the site field by field and recording them. The Applicant confirmed that when it had discussed the cable route and trenches it had not been talking about cable route to substation but about the internal routing between panels which can be aligned with land drains and change depth. The Applicant acknowledged that some of the detailed information regarding depth of pipes would need to be investigated and identified using a digger but that this could be dealt with in detail in the SMP, which will be a post-consent document, submitted once there is certainty as to exactly where the panels were located and where the cable route could be located to minimise impacts. The Applicant confirmed that if there was a problem, which it would know post-construction, it would become obvious as there would be a damp area within the site. The Applicant considered that on the whole, that may not be a problem as it is not like farming, as the land will be grassland and cleaning activities will normally take place when the land is dry, but if there are patches these can be rectified in the same manner as farmers would, which would not affect flood risk.
- 1.19 The Applicant agreed to consider the impacts on land drains and the potential for an increased flood risk.
- 1.20 **Action Point 3(e): Demonstrate whether damage to existing land drains could be mitigated to avoid increasing flood risk. Respond to SDDC's concerns regarding the potential for water no longer in the existing land drains to be directed more towards areas with higher flood risk. Secure the necessary mitigation.**
- 1.21 **Response to Action Point 3(e): Damage to existing land drains can be mitigated where an impact on drainage of the land is identified due to construction activity. Due to the expected low number of land drains on the Site based on walkovers and information from the landowner, and the very small area of the Site affected by cable trench excavations (approximately 2% of Site, with trenches almost exclusively routed around the perimeter of fields), the main source of damage to any existing land drains is expected to be piling for the solar panel mounting structure legs. New land drains and other drainage features can be installed under and around the solar pv mounting piles and buried cables to address any issues identified from**

land drains found to have been damaged during construction. The exact locations of piles and buried cables installed by the Applicant will be known and recorded, and these features can therefore be avoided by careful design and installation of the new drainage. The Applicant has addressed land drains in paragraphs 4.2.5 and 6.4.4 of the updated FRA submitted as part of its Deadline 5 submissions.

- 1.22 The Applicant was asked by the Examining Authority whether the Outline Drainage Strategy had been updated. The Applicant confirmed that Strategy sits within the FRA and would be submitted to the Examination at Deadline 5.
- 1.23 **Action Point 3(f): Submit an updated Outline Drainage Strategy to address the EA’s concerns [REP4-016] about the pollution risks of emergency response at the Battery Energy Storage System.**
- 1.24 **Response to Action Point 3(f): Section 6.4 of the FRA and Drainage Strategy confirms: “The BESS and substation pose a theoretical risk of fire, with the potential of contaminant mobilisation due to the chemicals within the electrical units and/or firefighting fluids. Therefore, the surface water system has been designed with an automated pollution control valve (linked to the fire detection system) such that surface water runoff will not be discharged during a fire event in these areas, preventing it from leaving the locality and allowing the potential contaminants to be removed/treated.”**
- 1.25 The Applicant was asked by the Examining Authority to respond to Derbyshire County Council’s suggestion for the Applicant to consult with the Derbyshire Fire and Rescue Service regarding site safety and particularly fire-fighting response at the BESS. The Applicant noted that the application was accompanied by an outline Battery Safety Management Plan (“BSMP”), which, at section 3.1, confirms that Derbyshire Fire and Rescue Service had provided advice during preparation of the outline BSMP specifically regarding access requirements for emergency vehicles and extinguishing fires. The Applicant had previously confirmed that the BSMP will be prepared in consultation with Derbyshire Fire and Rescue Service, however; Derbyshire Fire and Rescue Service had confirmed that the objectives of section 3.1 of the BSMP had been achieved. The Applicant confirmed that Derbyshire Fire and Rescue Service were notified of submission of the application and were contacted by the Applicant directly to progress a Statement of Common Ground (“SoCG”). Derbyshire Fire and Rescue Service had provided the Applicant within the National Fire Chief’s Council Grid Scale BESS Planning Guidance, as well as its standard letter on best facilities, and required the Applicant to confirm it had complied with this guidance. The Applicant confirms it has, and the necessary requirements are captured in Requirement 12 of the draft Development Consent Order, which makes provision for the local planning authority to coordinate and consult Derbyshire Fire and Rescue Service if changes are made to the final BSMP from the outline BSMP. The Applicant confirmed that Derbyshire Fire and Rescue Service did not see the need for a SoCG with the Applicant based on the information within the BSMP.
- 1.26 The Applicant agreed it would engage with Derbyshire Fire and Rescue Service to arrange a short letter from Derbyshire Fire and Rescue Service confirming its position.
- 1.27 **Action Point 3(g): Request that Derbyshire Fire and Rescue Service provide a submission to set out its position in relation to the Battery Energy Storage System.**
- 1.28 **Response to Action Point 3(g): Following ISH1, the Applicant wrote to Derbyshire Fire and Rescue Service to request this, but has not yet received a substantive response.**
- 1.29 The Applicant was asked by the Examining Authority to comment on the risk of flooding from the access tracks across the site. The Applicant confirmed that the Drainage Strategy covers internal tracks and that the tracks would be of a granular nature, which is inherently permeable and will include gravel-filled infiltration trenches to deal with heavy events and excess run-off. The Applicant confirmed the access track will be graded with these features on the downward side of the grade.

#### **Agenda Item 4 – Agriculture, Soils, and Decommissioning**

- 1.30 To assist the Examining Authority the Applicant informed the Examining Authority that Natural England had a number of technical questions in its previous submissions, which the Applicant addressed, including confirming the names of surveyors who undertook agricultural land classification assessments. The Applicant advised that Natural England had also asked about the cable route, which the Applicant had in part estimated, noting that the land within the Park Farm area was now outside the Order Limits. The Applicant confirmed that Soils Environment Surveys assessed the agricultural land classification of Oaklands Farm and addressed Natural England's comments in a document that went to Natural England for review. As regards the agricultural land classification of the cable route, the Applicant confirmed it undertook additional surveys at a ratio of 1 per hectare, with the southern part comprising of ALC Grade 3b, and the northern part comprising of ALC Grade 3a. The Applicant confirmed this report was sent to Natural England for them to look at in its entirety.
- 1.31 The Applicant confirmed to the Examining Authority that this information was yet to be shared with the Examining Authority because the Applicant wanted to ensure Natural England had sight of the documents. The Applicant committed to seek to resolve the outstanding issues with Natural England and submit an update (including an explanatory as to how Natural England's previous concerns had been resolved), together with the information provided to Natural England, to the Examination at Deadline 5.
- 1.32 **Action Point 4(a): Provide detail (for example in an update to the Statement of Common Ground (SoCG)) of Natural England's (NE's) previous concerns about the ALC being satisfied, including those summarised by the ExA [PD-012 question 6.1].**
- 1.33 **Response to Action Point 4(a): NE's response of 21 October 2024 confirms that they are satisfied that all of the technical questions raised about the two ALC reports have been addressed and they have no further comments. The Applicant continues to seek engagement from Natural England to progress the SoCG and will provide an update and draft SoCG at Deadline 6.**
- 1.34 The Applicant was asked by the Examining Authority to clarify in writing whether those individuals identified as supervisors to the agricultural land surveys were on site at the time of the surveys. The Applicant confirmed that these surveys involve a spade and a soil auger and that those individuals who did that work also wrote the survey reports. The Applicant confirmed that work was labour intensive and required physical activity and that surveyors needed to be skilled to know the texture of the soil to determine the ALC grade.
- 1.35 The Applicant acknowledged that it has different views to Derbyshire County Council on the Ministerial Statement and understood it applied where a body like Natural England would review agricultural land classification surveys but not that anybody else would attend sites to follow the auguring. The Applicant agreed to set out the differences between the parties in relation to the interpretation of the Written Ministerial Statement.
- 1.36 **The Written Ministerial Statement by the Secretary of State for Energy Security and Net Zero "Solar and Protecting our Food Security and Best and Most Versatile (BMS) Land" (15 May 2024) set out a paragraph about improving soil surveys. That set out the following: "The Government has heard concerns about the perceived inaccuracy and unfairness of soils surveys undertaken as part of the planning process for solar development. The Government will address this by supporting independent certification by an appropriate certifying body, subject to relevant business case approval, to ensure Agricultural Land Classification Soil Surveys are of a high standard, requiring surveyors to demonstrate meeting an agreed minimum requirement of training/experience. We will also seek to ensure consistency in how data is recorded and presented, so that reports on agricultural land classification are consistent, authoritative and objective". The Applicant's interpretation of this, as expressed by Mr Kernon, is that the UK Government is considering a certification system for ALC surveyors and guidance on the content of ALC surveys. It is the Applicant's understanding that the interpretation of this by Mr Franklin, on behalf**

of Derbyshire County Council, is that it is expected that all field surveys will need to be supervised by independent soil surveyors. The Applicant will ensure the parties' positions are set out in the draft SoCG submitted at Deadline 6.

- 1.37 **Action Point 4(a): Clarify the expertise present on site during the Agricultural Land Classification (ALC) surveys.**
- 1.38 **Response to Action Point 4(a): The expertise of the ALC surveyors from SES Ltd is set out in the revised ALC report (August 2024). Two surveyors did the fieldwork: Louise Tavasso BSc (Hons), M.I.Soil Sci, and Dr Robin Davies BSc PhD F.I.Soil Sci, PGC. Dr Davies approved the report. The expertise of the ALC surveyors for KCC Ltd is set out in the ALC report (October 2024). Adrian Rochford HND, FACTS, BASIS, Fellow of the Institute of Professional Soil Scientists (FIPSS), carried out the fieldwork in 2021 and 2024, and the ALC calculations and report were completed by Robert Askew BSc (Hons), MSc, F.I.Soil Sci.**
- 1.39 The Applicant confirmed to the Examining Authority that its commitment to restore the agricultural land quality post-decommissioning activities to its current condition was the objective of the SMP, with the latest version of the outline management plan to be submitted to the Examining Authority. The Applicant acknowledged that this was a target and that it would provide a firmer undertaking to return all the land to its current ALC Grade or better within the SMP to be submitted to the Examination at Deadline 5.
- 1.40 **Action Point 4(b): Secure that agricultural land within the Order Limits would be restored to the same ALC grade following construction (with identified exceptions) and following decommissioning (without exception) and how this would be verified. Consider, with reference to paragraph 4.59 of the Cottam Solar Project decision letter, whether soil health would be monitored during the lifetime of the Proposed Development.**
- 1.41 **Response to Action Point 4(b): Section 1.1.6 of the Outline Soil Management Plan (OSMP), appended to the outline CEMP submitted at Deadline 5, provides a firm commitment that agricultural land will be restored to the same ALC grade following construction. Following construction, areas within the Site within agricultural land that are utilised temporarily during construction (e.g., temporary haul road, temporary construction compounds, underground cable routes), will be restored to the same ALC grade. Areas of the Site that host above ground infrastructure during the operational life of the Proposed Development, will be exempt (e.g., BESS, substation, permanent onsite tracks etc).**
- 1.42 **Section 4.6.2 of the Outline Operational Environmental Management Plan has been updated at Deadline 5 to provide commitment to monitoring soil health every 5 years during the operational period of the Proposed Development. Details of the monitoring programme will be provided in the detailed OEMP, as approved by the local planning authority.**
- 1.43 **Section 1.6 of the OSMP, appended to the outline DEMP submitted at Deadline 5, provides a firm commitment that agricultural land will be restored to the same ALC grade following decommissioning without exception.**
- 1.44 **Relating to ALC grading of all soils on site following decommissioning, Section 1.1.6 of the OSMP, included in the outline DEMP submitted at Deadline 5 states: *"The soils will be restored to the pre-construction ALC grade. A programme of monitoring for up to 5 years will be set out, to ensure that the correct ALC criteria have been reached (on land restored to agriculture) and the habitats created are in a suitable condition. Depending on the land-use, agricultural activities, site-specific conditions and site-specific construction activities, the aftercare may include treatments such as: cultivation (e.g. subsoiling), installation of underdrainage, seeding, liming, and/or fertilising."***

- 1.45 As regards restoration following construction activities, the Applicant confirmed that this comprised of two stages. The construction compound and initial trenching would need to be restored back to its existing condition straight away. The land around the access tracks would be a long way in the future. The Applicant clarified that anything that is temporary construction work would need to go back to its pre-construction quality, with those principal areas being the construction compound and initial trenching.
- 1.46 The Applicant also clarified that the construction track in the north of the site at Rosliston Road will be removed once construction is complete and the land reinstated. Pre-decommissioning this will be reinstated and again reinstated post-decommissioning. The Applicant committed to clearly set this out in the management plans.
- 1.47 **Action Point 4(b): Clarify when access and haul roads would be removed.**
- 1.48 **Response to Action Point 4(b): The Applicant has updated paragraph 1.14.1 of the outline CEMP, submitted at Deadline 5, to confirm that the temporary construction haul road will be removed following construction, and the land restored to its current condition. The Applicant has updated paragraph 3.1.2 of the outline DEMP, submitted at Deadline 5, to confirm that the temporary construction haul road would be reinstated for decommissioning, removed following decommissioning, and the land will be restored its current condition.**
- 1.49 The Applicant confirmed, in regard to culverts, that the intention was that culverts would remain as a more robust feature of access during the operational life of the project but that the track would be removed and the land reinstated. The Applicant acknowledged that maintaining the culverts would ensure the culverts were in place for decommissioning. The Applicant confirmed the track would be removed from operation. This was a flexibility measure to maintain access that could be reinstated during operation if required but the haul road, as described by South Derbyshire District Council, would remain during operation. The Applicant reiterated its earlier commitment to the Examining Authority to look at the pros and cons of the culverts during the operational phase and to consider whether they should be retained.
- 1.50 The Applicant queried what Natural England intended in its comment in [AS-033] regarding soil health monitoring, as the Applicant was unclear what kind of surveys Natural England had in mind. The Applicant acknowledged the position at paragraph 4.59 of the Cottam Solar Project Decision Letter and noted that it would need to be considered as there have been issues with soil surveys using soil augers being undertaken in operating solar farms. The Applicant confirmed with the Examining Authority that it would seek clarity from Natural England on its position.
- 1.51 The Applicant confirmed in relation to Natural England's concerns relating to ExQ 6.2 that it had updated the OSMP to refer to the latest versions of the relevant guidance documents. The Applicant informed the Examining Authority that there were ongoing discussions relating to the start and stop date in terms of months, as it has not been possible to comply with them over the last 5/6 autumns in terms of weather. The Applicant confirmed it had proposed a slightly more flexible structure requiring a qualified person to show soils were suitable and that Natural England was amenable to this.
- 1.52 **Action Point 4(c): Provide detail (for example in an update to the Statement of Common Ground (SoCG)) of Natural England's (NE's) previous concerns about the Outline Soil Management Plan being satisfied including those summarised by the ExA [PD-012 question 6.2] and in relation to concerns about the area of the BESS and onsite substation [REP4-055].**
- 1.53 **Response to Action Point 4(c): The Applicant has updated the OSMP and issued a copy to NE for consideration. The Applicant considers that the amendments address each of the eight comments set out in ExQ 6.2 [PD-012]. In its response of 21 October 2024, Natural England requested an aftercare programme to be included in the OSMP. As noted above, the OSMP has been updated accordingly. The**



**Applicant continues to seek engagement from Natural England to progress the SoCG and will provide an update and draft SoCG at Deadline 6.**

- 1.54 In regard to the mitigation of impacts on agricultural land due to potential damage to existing land drains by piling and cabling, including the suitability of Sustainable Drainage Systems (“SuDS”), the Applicant confirmed that whilst there are measures in place for the battery area and the substation, in term of land drains it will be a matter of investigation. From a cabling point of view, mitigation will be to identify the damage in order to repair it. In terms of damage to land drains by piling, because they are driven into the ground, it will be a process of investigation and assessment if adverse effects are seen, for example; pooling at the surface or damp, boggy patches. The Applicant confirmed it would not jump straight into installing SuDS and a stepwise approach would be taken to investigate, and a range of mitigation measures would depend on what was found.
- 1.55 The Applicant was asked by the Examining Authority to confirm whether SuDS is an appropriate mitigation for agricultural land and if not, whether it needs to be removed from the set of options when looking at flood risk. The Applicant confirmed that in terms of localised damages to a land drain by a pile, SuDS would not be appropriate and instead investigation and mitigation would talk more to the health of the soil during operation. The Applicant advised SuDS would be better suited if there was a perceived overland flow problem, a strip/filter drain would be put in for the field. SuDS in their purest form would not be suitable for a localised piece of damage. It would be investigation into soil health into why it happened and a specific mitigation option.
- 1.56 The Applicant confirmed it would clarify the reference to SuDS in relation to land drains within the application, with reference to paragraph 2.6.5 of the outline CEMP. The Applicant was asked by the Examining Authority what implications SuDS would have on soil quality. The Applicant confirmed that on page 8 of ‘Agricultural Land Classification of England and Wales’ it states that where limitations can be reduced or removed through normal management operations or improvements, for example; cultivations or installation of an appropriate under drainage system, the land is graded according to the severity of the limit. The ALC system should take into account localised issues to drainage that affect the water table and that this should not result in adverse impacts on the land classification.
- 1.57 The Applicant committed to consider secured mitigation measures that deal with not worsening flood risk and not worsening agricultural land, satisfying the Examining Authority and the Secretary of State that such measures do exist.
- 1.58 **Action Point 4(d): Demonstrate whether damage to existing land drains can be mitigated to avoid adverse impacts to agricultural soils. Secure the necessary mitigation.**
- 1.59 **Response to Action Point 4(d): Damage to existing land drains can be mitigated where an impact on drainage of the land is identified due to construction activity. Due to the expected low number of land drains on the Site based on walkovers and information from the landowner, and the very small area of the Site affected by cable trench excavations (approximately 2% of Site, with trenches almost exclusively routed around the perimeter of fields), the main source of damage to any existing land drains is expected to be piling for the solar panel mounting structure legs. New land drains and other drainage features can be installed under and around the solar pv mounting piles and buried cables to address any issues identified from land drains found to have been damaged during construction. The exact locations of piles and buried cables installed by the Applicant will be known and recorded, and these features can therefore be avoided by careful design and installation of the new drainage. In terms of classification, the land classification system<sup>1</sup> assumes that “where limitations can be reduced or removed by normal management operations or improvements, for example cultivations or the installation of an appropriate underdrainage scheme, the land is graded according to the severity of the remaining limitations”. Consequently, any adverse effects on**

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<sup>1</sup> Ministry of Agriculture, Fisheries and Food (1988) - ALC Guidelines

**field drainage will not result in a downgrading or change to the ALC grading of the site.**

- 1.60 The Applicant was asked by the Examining Authority to respond to Derbyshire County Council's comments that there would need to be satisfaction that land drains could be installed in such a way as to enable agricultural uses after decommissioning. The Applicant confirmed in terms of principles that it agrees and that is part of the SMP, but that the detail will be brought forward. The Applicant confirmed that generally land drains will go around the outside of where the panels are and where those cabling works are going in and any drain crossings would be made good depending on whether the cables were laid above or below the drains. The Applicant noted that if field drains are 6-7 feet deep and cables are at a higher level, then the cable will need to be removed on decommissioning as going across where future repair or replacement of land drainage would take place in the future. The Applicant confirmed there is no inhibition on current agricultural land quality or future of the land, including restoration and extension of field drainage.
- 1.61 The Applicant confirmed it would include mitigation within the outline DEMP and/or OSMF that deals with the issue of reinstatement of land drains as a consideration when looking at the removal of cables and reemphasised that any land drainage impacted at the construction phase would be remedied there and then. This approach would then apply again at decommissioning and would do less damage than to leave cables buried if they are below the drain level.
- 1.62 **Action Point 4(e): Respond to SDDC's concerns that cables left in place after decommissioning could conflict with future agricultural land uses including in relation to the reinstatement of land drainage.**
- 1.63 **Response to Action Point 4(e): As stated in Section 3.1.4 of the outline DEMP, the Applicant intends to remove underground cables at decommissioning, though will be led by the local planning authority and relevant policy in place at the time. Therefore, following decommissioning, cables will not conflict with the future agricultural land use of the Site. In terms of drainage repairs, if needed, and in areas where records have been kept showing that there are wet spots, it will be necessary to repair any broken drains. These will be marked up and localised repairs undertaken.**
- 1.64 In response to a comment from Amy Wheelton that consideration should also be given to the potential for pollution or contamination, the Applicant confirmed that advice from its technical grid engineers is that there are no known issues with leaching from the types of cables which the Applicant would use.
- 1.65 In relation to the potential for decommissioned cables left in situ to be considered 'waste', following a comment from the Environment Agency in [REP1-032], the Applicant agreed to give further consideration to this matter.
- 1.66 **Action Point 4(e): Set out evidenced implications in relation to contamination and waste of underground cables left in place after decommissioning.**
- 1.67 **Response to Action Point 4(e): As stated in Section 3.1.4 of the outline DEMP, the intention is to remove underground cable, but notwithstanding this, the Applicant is not aware of evidence of long-term effects due to underground cables being left in place after decommissioning. The Applicant intends to remove buried cables after decommissioning, though this will be subject to approval of the detailed DEMP by the LPA, and relevant policy and legislation at the time of decommissioning.**
- 1.68 The Applicant confirmed that the five-year aftercare monitoring programme for soils proposed by Natural England would be considered together with Requirement 22 of the draft Development Consent Order. The Applicant agreed to consider whether there is merit in maintaining and updating the description of the 'end state' in the ODEMP, and explicitly requiring the end state to be considered as other measures are put in place.

- 1.69 **Action Point 4(f): Consider whether, during the preceding years, it would be beneficial to review and agree updates to the description of the end state after decommissioning.**
- 1.70 **Response to Action Point 4(f): The Applicant maintains the position set out in response to ExQ2 Q5.1, that it is not necessary to review and agree updates to the description of the end state through the construction and operational phases. In summary, the anticipated end state after decommissioning is set out within Section 3.1 of the outline DEMP. The detail included in the outline DEMP has been forward planned sufficiently so that decisions made now do not impede the ability to effectively decommission in the future. Design decisions have been, and will be, planned to ensure that decommissioning can be undertaken effectively. Requirement 22 (decommissioning and restoration) necessitates that the undertaker submits a final DEMP and decommissioning traffic management plan for prior approval, and to decommission the Proposed Development in accordance with the approved plans. This approach will ensure that the Local Planning Authorities have the opportunity to determine the acceptability of the end state after decommissioning, in line with the relevant legislation and policy in force at that time. This will ensure that through the design, operation, maintenance, decommissioning phases of the Proposed Development, the desired end state (as specified in the final DEMP submitted under Requirement 22) would be achieved. As per Requirement 22, the final DEMP needs to be submitted within three months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, or no later than 6 months before the 40<sup>th</sup> anniversary of the date of final commissioning of the first phase of the authorised development, whichever is the earlier. Therefore, the detailed DEMP will be up-to-date with relevant legislation and policy in force at the time of decommissioning, and will account for any changes to the site from its original state prior to construction and through operations, ensuring such changes are factored into the DEMP and the end state that decommissioning will be designed to achieve. The Applicant has therefore inherently considered, and will continue to consider, the end state and decommissioning of the Proposed Development such that no further action at this time is considered necessary. Following the ISH1, the Applicant has updated the outline OSMP, appended to the outline DEMP, to confirm that the Applicant is committed to ensuring that the land quality following decommissioning is the same as the land quality prior to construction (Section 1.5 and 1.6 of the OSMP). The Applicant has committed to a programme of monitoring for up to 5 years following decommissioning, to ensure that the correct ALC criteria have been reached (on land restored to agriculture) and the habitats created are in a suitable condition. Depending on the land-use, agricultural activities, site-specific conditions and site-specific construction activities, the aftercare may include treatments such as: cultivation (e.g. subsoiling), installation of underdrainage, seeding, liming, and/or fertilising.**
- 1.71 In regard to securing funding for the decommissioning of the development, the Applicant confirmed that its starting position is that it is inappropriate to do so. The Applicant noted that it is not a subject that has come up before in the context of renewable energy DCOs. The Applicant noted that earlier in the hearing the Examining Authority had pointed the Applicant to a number of instances in NPS EN-3, for example regarding culverts, that applied when it would have been thought they would be site-specific considerations. The Applicant reiterated that it could not think of a more generic issue than decommissioning and funding to support it across all sites. The Applicant acknowledged that the Examining Authority had also referenced other more highly regulated industries where decommissioning is tightly controlled, for example; nuclear waste and that there are very clearly design regimes and processes that follow those, but that these do not generally find their way into renewables. The Applicant noted that NPS EN-3 paragraph 2.10.68 would be the obvious place to specify a requirement for DCOs to provide for the Examining Authority and the Secretary of State to ensure there is adequate funding for decommissioning, but not only is there not a reference to that end, but when you get to

paragraph 2.10.68, it simply states “solar panels can be decommissioned relatively easily and cheaply” and does not go into anything else to raise that as a concern.

- 1.72 The Applicant acknowledged that the Examining Authority had asked the question, raised by interested parties, what would be the incentive for someone to properly comply with the adequate controls in the draft Development Consent Order. The Applicant confirmed that the strongest differentiating character was that the land is to be returned to the beneficial use of the landowner and that is a markedly different situation to a poorly restored minerals site or a badly maintained waste management site or even more hazardous waste that cannot be signed off and put to some other beneficial use. The controls between the landowner and the Applicant are going to be strongly enforced and also at the local authority and developer level. The Applicant acknowledged that the Examining Authority could question what would happen if decommissioning was undertaken by someone other than the Applicant, but noted this is the nature of planning permissions and development consent orders and that there is an adequate protection as the Examining Authority and the Secretary of State will consider that and will continue to enforce that for any transfer of the benefit of the Order. The Secretary of State will be seized of the opportunity and as the development gets closer to decommissioning it becomes an ever more present question – does the person taking on the benefit have the financial standing to meet the financial liabilities coming? The Applicant confirmed that there is no precedent for securing a decommissioning fund or bond within a solar development consent order and reiterated that it could not think of a subject that lends itself more to a policy-wide approach than funding decommissioning, and yet it has not been done in NPS EN-3.
- 1.73 The Applicant agreed to consider its position following statements by the Examining Authority.
- 1.74 **Action Point 4(g): Consider whether, to respond to concerns and provide security, a commitment should be made to building a decommissioning fund during operation.**
- 1.75 **Response to Action Point 4(g): The Applicant maintains the position set out in response to ExQ2 Q5.3. In summary, the Applicant considers that the proposed securing of decommissioning funds within the dDCO is highly unusual and has no precedent in comparative schemes. Requirement 22(1) (decommissioning and restoration) requires the decommissioning of the authorised development. In the event this Requirement is not complied with by the undertaker at the time of decommissioning, there will be a breach of the terms of the order granting development consent and criminal proceedings could be initiated against the undertaker in accordance with section 161 of the Planning Act 2008. In the event the benefit of the Order was transferred to a different undertaker, that new body would become responsible for the authorised development and for complying with the terms of the DCO. As failing to comply with a Requirement is a criminal offence, confidence is provided that decommissioning will be carried out appropriately, irrespective of who may be the undertaker at the relevant time.**
- 1.76 The Applicant’s approach and its position that it is not appropriate for a decommissioning bond to be secured under the DCO is consistent with recent DCO precedents. However, the Applicant acknowledges the Examining Authority is minded to include a requirement for a decommissioning bond. If this is required, the Applicant proposes the following wording, which is used commonly as a condition in Section 36 Consents in Scotland and has been revised to accord with the drafting of a Development Consent Order:

***Requirement 27 – Decommissioning fund***

***27—(1). No phase of the authorised development may commence until a decommissioning fund or other form of financial guarantee that secures the cost of performance of all decommissioning obligations under Requirement 22 of this Order has been submitted to and approved by the local planning authority.***

***(2) The value of the decommissioning shall be agreed between the Undertaker and the local planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning obligations referred to in Requirement 22 of this Order.***

***(3) The decommissioning fund shall be maintained in favour of the local planning authority until the date of completion of the works to be undertaken in accordance with Requirement 22 of this Order.***

***(4) The value of the decommissioning fund shall be reviewed by agreement between the Undertaker and the local planning authority by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning obligations and best practice prevailing at the time of each review.”***

The Applicant considers that the benefit of using this wording is that it is already being imposed by Scottish Ministers regularly such that it is clearly in a form which experienced decision-makers consider is enforceable and workable and it will therefore be in a form which is familiar to security providers.

- 1.77 As regards the timing of decommissioning, the Applicant acknowledged there may be some slight cross-purposes and confirmed that there was no intention that the site for whatever reason would fall out of use and remain in situ until 40 years comes along prior to decommissioning and noted this approach was captured by the first words of Requirement 22.
- 1.78 The Applicant considered that decommissioning will finish within a defined period of time but that flexibility is there to avoid pre-judging that before the local planning authority has had the opportunity to look at the DEMP at the appropriate time and that the Applicant's view is that that period is at the approval of the planning authority in discharging the DEMP, and it is a matter for the planning authority to be able to control at that point. The Applicant agreed to add a qualification to Requirement 22 that it would apply as drafted unless otherwise agreed in writing between the Undertaker and the local planning authority.
- 1.79 **Action Point 4(g): Consider securing that decommissioning must start no later than a specific period following generation or supply of electricity stopping. Consider securing that decommissioning must be completed within a specified period, for example two years unless otherwise agreed with the Local Planning Authority.**
- 1.80 **Response to Action Point 4(g): The Applicant maintains its position that Requirement 22 in the draft Development Consent Order sufficiently provides for the decommissioning of the scheme at any point during its operational life such that additional wording to tie this to generation does not need to be included. The Applicant has amended Requirement 22 in the draft Development Consent Order to require decommissioning to be completed within two years unless otherwise agreed with the Local Planning Authority.**

#### **Agenda Item 5 – Biodiversity**

- 1.81 The Applicant confirmed that no harsh chemicals would be used in the annual cleaning of the solar arrays, which the Applicant confirmed were the equivalent to household detergents.
- 1.82 **Action Point 5(a): Secure a precise definition of the chemicals to be used to clean the solar panels and provide evidence that NE are satisfied that they are not ‘harsh’, for example in an update to the SoCG.**
- 1.83 **Response to Action Point 5(a): The Applicant has updated the outline OEMP at paragraph 4.2.4 to confirm the chemicals that may be used during the maintenance**

**schedule. The Applicant continues to seek engagement from Natural England to progress the SoCG and will provide an update and draft SoCG at Deadline 6.**

- 1.84 The Applicant committed to the Examining Authority to confirm the location and hectareage of the proposed grassland that will act as a flood meadow within the SoCG with South Derbyshire District Council.
- 1.85 **Action Point 5(a): In response to SDDC's concerns, secure the location and acreage of grassland to mitigate impacts on the River Mease Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).**
- 1.86 **Response to Action Point 5(a): The Applicant has updated Section 2.6.9 of the outline CEMP to include this detail. Applicant will ensure the parties' positions are set out in the draft SoCG submitted at Deadline 6.**
- 1.87 Regarding how the woodland bordering the former Drakelow Power Station should be defined, the Applicant acknowledged that its position was not far apart from the position of South Derbyshire District Council. The Applicant confirmed it had recently attended site and that the woodland more aligned to the definition of 'Other Broadleaved Woodland'. The Applicant advised that it considered this was a moot point because the definition would not change the mitigation proposed and that the difference comes down to the BNG metric. The Applicant noted there was a negligible difference and implication on BNG as the Applicant is predicting to deliver BNG in excess of 120%. The Applicant noted that the UKhab simply described the differences between the woodlands because sycamore is dominant and a non-native species, which is why the Applicant adopted that approach.
- 1.88 The Applicant confirmed that much of the woodland is open so it is confident that the ecological impacts could be minimised and a route through the woodland can be found. The Applicant also clarified that if the woodland was described as 'Lowland Mixed Deciduous Woodland', there would be no impact on the assessment, as the Applicant is still recognising the importance of the woodland. The Applicant confirmed it would clarify this position in the SoCG with South Derbyshire District Council.
- 1.89 **Action Point 5(b): Address inconsistencies in the descriptions of woodland in different parts of the Environmental Statement, as identified by SDDC. Set out SDDC's position (for example in an update to the SoCG) in relation to concerns raised about the classification of woodland bordering the former Drakelow Power Station and related impacts and mitigation.**
- 1.90 **Response to Action Point 5(b): As set out in the above summary, the Applicant remains of the view that the woodland bordering the former Drakelow Power Station is more aligned to the definition of 'Other Broadleaved Woodland'. The definition used would not alter the mitigation proposed and would only have a negligible difference for the BNG calculation. The Applicant will ensure the parties' positions are set out in the draft SoCG submitted at Deadline 6.**
- 1.91 With reference to Article 37 (trees subject to tree preservation orders) of the draft Development Consent Order, the ExA noted the 'Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects' guidance refers to identifying the affected trees and the works permitted to each tree in a Schedule. The Applicant confirmed that the powers under Article 37 are likely to be required in relation the cable route at Drakelow substation as the exact route to be taken is yet to be determined, as the decision and design lies with National Grid and other developers are also trying to connect, such that there are lots of competing concerns. The Applicant confirmed it has attended the site with National Grid and the Applicant's experts, and identified a route that can avoid trees within that area but that it is difficult to have certainty as to the affected trees at this stage.
- 1.92 **Action Point 5(c): With reference to Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects, identify trees subject to a Tree Preservation Order that would be affected and the works**

permitted to each tree (e.g., fell, lop, or cut back its roots) in a schedule to the draft Development Consent Order (dDCO). Justify where this is not possible (for example where the detailed design requires consultation with National Grid) and in those areas consider securing mitigation for any works to the trees to be subject to the prior consent of the Local Planning Authority.

- 1.93 **Response to Action Point 5(c): The Applicant has updated the draft Development Consent Order to include a Schedule setting out the trees subject to Tree Preservation Orders that may be subject to works under Article 37.**
- 1.94 The Applicant confirmed it would provide a series of interpretable maps showing the buffers applied to the Habitats Constraint Plan.
- 1.95 **Action Point 5(d): Responding to SDDC's request, provide a draft version of interpretable maps in relation to habitats constraints and buffers. Provide evidence that SDDC are content, for example in an update to the SoCG.**
- 1.96 **Response to Action Point 5(d): The Applicant has provided a series of interpretable maps of habitat constraints within Document 13.8 submitted by the Applicant at Deadline 5. These are indicative and would be updated and submitted as part of the detailed CEMP, as set out in paragraph 2.8.5 of the outline CEMP.**
- 1.97 The Applicant maintained that impacts to skylark are not significant in EIA terms but that it recognises there is a residual effect. The Applicant confirmed that it understands the area of disagreement to be that the scale of impact is lower than what South Derbyshire District Council would apply. The Applicant confirmed that whilst the study area of 19 pairs might be of District level importance, its assessment of the impact being a lower scale of impact is predicated on a few additional considerations, for example; 19 skylark pairs attempting to breed with the conditions on site, and the way the agriculture is managed being sub-optimal to skylark, means there is a high chance that there are not 19 successful breeding attempts. The Applicant noted emerging evidence that when solar projects increase biodiversity, neighbouring skylark and nesting is improved. The Applicant noted that it is not as simple as the scheme leading to the loss of 19 pairs. The Applicant confirmed there are also areas in the Order Limits that would allow several pairs to breed but factoring that in, the actual level of impact is lower. The Applicant acknowledged South Derbyshire District Council's concerns and there being a risk through the planning process and difference of opinion so the Applicant has pursued the option to find off-site mitigation. The Applicant reiterated that specific mitigation for skylark is not necessary but, in acknowledgment of South Derbyshire District Council's differing opinion, that it had taken steps to explore whether there is suitable land in the vicinity of Oaklands Farm to provide skylark plots. The Applicant confirmed it was in discussions with the landowner to pursue a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 and that it would provide an update on this agreement at Deadline 5. The Applicant also confirmed that if the off-site mitigation is provided, it would change a minor residual effect into to a benefit to the species.
- 1.98 **Action Point 5(e): Set out the offsite mitigation proposals for skylark plots and provide evidence that it is secured. Provide evidence that SDDC are content for example in an update to the SoCG.**
- 1.99 **Response to Action Point 5(e): The Applicant confirmed at ISH1 that, in summary, it remains of the view that specific mitigation for skylark is not necessary, but in acknowledgement of the differing opinion of SDDC, on this matter it is in the process of agreeing the terms of a S106 unilateral undertaking to provide for offsite mitigation in the form of skylark plots. The Applicant's position is that the mitigation being proposed would be sufficient to result in a benefit for this species. The terms of any S106 agreement unilateral undertaking would require a skylark mitigation strategy to be submitted to SDDC prior to the commencement of development and the skylark mitigation areas maintained for the lifetime of the development. The Applicant will be seeking to agree a position with SDDC through the SoCG and will progress those discussions following Deadline 5.**

- 1.100 The Applicant confirmed the reason specific barn owl surveys were not undertaken is that there is a very good understanding of barn owl ecology. The Applicant confirmed it is confident in how barn owl are currently using the site and that the Applicant's consultant personally has extensive barn owl experience having attended training courses with the Barn Owl Conservation Trust, having held Natural England Disturbance Licences and having delivered countless mitigation schemes. The Applicant confirmed that it was important to recognise that the scheme will certainly provide a significant benefit for barn owl. The Applicant quoted the Barn Owl Conservation Trust, which states that:
- (a) Solar PV 'farms' have the potential to be of great benefit to Barn Owl as the array frameworks are typically at a height from which Barn Owls can perch-hunt.'; and
  - (b) 'solar farms can not only successfully mitigate lost Barn Owl foraging habitat, but they can enhance the foraging opportunities for owls, and even given rise to a net gain in biodiversity'.
- 1.101 The Applicant acknowledged previous comments regarding grassland but emphasised that even the Barn Owl Conservation Trust recognise that grazing and barn owls can mix provided the grazing regime is not too intensive so there is a leaf litter, which is effectively a thatch in the grassland. The Applicant confirmed that barn owls really need grassland with thatch for field voles and that thatched grassland occurs and can be detailed and brought forward within the LEMP, secured by the draft Development Consent Order. The Applicant reiterated that it is important to recognise that habitat on site is very poor for barn owl. The Applicant clarified it was not suggesting that barn owls are not present, as they will be because there are suitable nesting areas, however; the Applicant does not accept that there will be a loss of foraging and that the proposals will provide a significant benefit. The Applicant noted that even during construction, even though the extent of suitable foraging is negligible, the suitable hunting area is limited due to field edges, hedgerows and protective fencing. At night, when construction finishes, there will be a dark, silent area with fencing and rough grassland so the Applicant has no doubt barn owl will use the area for hunting. The Applicant considered that the primary risk relates to disturbance at nesting sites and that this relates to large hollow trees. The Applicant confirmed it had not inspected those trees but that it could do so. The Applicant confirmed that the key thing is that the mitigation that can be proposed for barn owl has a really high success rate, and it is very well known the best thing that can be done for barn owl is to put up boxes where you want the barn owls to be. The Applicant confirmed it would update the outline CEMP to secure a barn owl survey to be undertaken at a very early stage of the development as part of the pre-construction checks before site preparation and clearance works. The Applicant also confirmed it would provide additional detail within the outline CEMP on managing the grazing on site, so the foraging habitats are suitable for barn owls.
- 1.102 **Action Point 5(f): Clarify the evidence to support that impacts and mitigation can be identified without a barn owl survey. Consider whether a barn owl survey and update of mitigation measures is required before site preparation works commence. Provide evidence that SDDC are content, for example in an update to the SoCG.**
- 1.103 **Response to Action Point 5(f): Further evidence regarding barn owl can be found in Document 13.9 submitted by the Applicant at Deadline 5. With regard to mitigation, the Applicant has updated paragraph 2.8.6 of the outline CEMP. The Applicant will be seeking to agree a position with SDDC through the SoCG and will progress those discussions following Deadline 5.**
- 1.104 The Applicant maintained its position that Great Crested Newts ("GCN") are highly unlikely to occur within the site or to be impacted by proposed development. GCN readily move to and colonise new ponds therefore if GCN were present in off-site ponds, they would have been recorded in the optimal water bodies in the site. The Applicant confirmed that if GCN are close enough to be affected, they are close enough to be recorded. The Applicant confirmed that one of the highest precursors for GCN to be present is the presence of newts in nearby waterbodies so, if they are close enough to be affected by



the development GCN would have been picked up in the Applicant's eDNA surveys. The Applicant noted that the District Level Licensing employed at other schemes in the area does not necessarily infer that GCN are present. District Level Licensing is a scheme that those applicants have chosen as it provides simplicity in the planning process as it eliminates the need for surveys, associated timing programme restrictions and complications such as the issues raised in this Agenda Item. Where an applicant has followed the District Level Licencing approach ,this does not necessarily mean there are GCN on their site. The Applicant confirmed it would ask Natural England for its view but imagined that Natural England would prefer to rely on its standing advice on protective species, but the Applicant reiterated it would try and engage with Natural England through its paid services.

- 1.105 The Applicant clarified for context that it had surveyed nine optimal waterbodies that all came back negative and although there are waterbodies off-site that have not been surveyed, they have been identified on Ordnance Survey and the Applicant had recently accessed a few that are mobile enough. The Applicant confirmed that some of the ponds identified were either not ponds or were completely unsuitable. The Applicant confirmed there was no way to verify for all of them but reiterated that if you have ponds close to the site that are suitable, GCN would have been picked up in the eDNA for the sites surveyed. The Applicant clarified that when undertaking eDNA surveys, a water sample is taken and sent off to a lab. The Applicant could not be certain on the levels of accuracy but considered that provided samples are taken by suitably qualified personnel, the level of accuracy was very high. The Applicant confirmed that samples were taken at nine ponds. The Applicant confirmed that some ponds were not surveyed because they were identified as ponds but were not there at the time of the surveys and some were scored 'low', so might be watercourses with fish. The Applicant clarified that the nine surveys were those that scored 'moderate' and 'above'. Water samples were taken and sent to the lab and all scored negative for GCN. The Applicant confirmed the closest known record of GCN is about 1km away. The Applicant confirmed that it can agree a precautionary approach to GCN for example; soil handling and how that would be done and ensuring that no trenches are left open in sensitive areas that could cause entrapment.
- 1.106 **Action Point 5(g): Consider whether additional precautionary mitigation is required for great crested newt. Provide evidence that SDDC are content, for example in an update to the SoCG.**
- 1.107 **Response to Action Point 5(g): Further evidence regarding GCN can be found in Document 13.9 submitted by the Applicant at Deadline 5. The Applicant has also updated paragraph 2.8.7 of the outline CEMP. The Applicant will be seeking to agree a position with SDDC through the SoCG and will progress those discussions following Deadline 5.**
- 1.108 The Applicant noted that it could not recall what mitigation measures for otter had been omitted from the outline CEMP, acknowledging that it could potentially be the licensing aspect if a shelter is found, but that it was happy to provide these measures. The Applicant considered that on any scheme like this, pre-construction checks are carried out to see whether there is a shelter present. For context, otters are a highly mobile species, which occupies vast home ranges, often covering tens of kilometres of watercourses. The Applicant confirmed that otters are a species that will regularly cross mountain tops to reach new watersheds so they will have no issue crossing culverts. The real question is impact from human and machinery presence whilst otters are breeding nearby. The Applicant noted that female territories are not as large as males' and they will overlap if the otter are related. However, if you drew a line of the watercourses present within the site going down to the River Mease or River Trent, an otter is likely to have all of that within their territory, so it is incredibly unlikely for them to have a holt during the vicinity of a crossing point at the time of construction. The Applicant acknowledged that you would not expect a female otter to raise cubs when you have field margins very close. Otters typically choose denser more protected area that do not flood, for example, islands. The Applicant considered it incredibly unlikely, but not impossible, that otter would be impacted by the development and that pre-construction checks would resolve the residual low level of impact that is the focus of the CEMP. **Further evidence regarding otter can be found**

**in Document 13.9 submitted by the Applicant at Deadline 5. With regard to mitigation, the Applicant has updated paragraph 2.8.8. of the outline CEMP.**

- 1.109 The Applicant sought clarification on the areas referred to by South Derbyshire District Council as valuable habitat noting that the Applicant has taken great pains to design the scheme and retain important areas of habitat, notwithstanding that there are some watercourse crossings because there needs to be, but the vast majority of the watercourse is outside the Order Limits. The Applicant confirmed the 'great swathes' of valuable habitat was not part of its experience of the site. The Applicant confirmed it would provide detail of the routing of the haul road if South Derbyshire District Council could provide specifics as to the location of the habitat it considered to be valuable.
- 1.110 **Action Point 5(h): Set out the consideration given to the options for the routing of the construction haul road, including in relation to the 'wildest parts of the site' expressed by SDDC.**
- 1.111 **Response to Action Point 5(h): The Applicant's consideration can be found in Document 13.9 submitted by the Applicant at Deadline 5.**
- 1.112 The Applicant confirmed it had received a Letter of No Impediment in relation to its draft Badger Licence application on 21 October 2024 and that the measures specified seemed reasonable and deliverable as part of the formal licence application. The Applicant confirmed it would share the Letter of No Impediment at Deadline 5. **The Applicant has submitted a copy of the Letter of No Impediment as part of its Deadline 5 submissions.**
- 1.113 The Applicant acknowledged that the CEMP referred to invasive species but that only Japanese Knotweed was referred to specifically. The Applicant confirmed it would clarify what it means by 'invasive species' within the CEMP.
- 1.114 **Action Point 5(k): Update the mitigation for Invasive Non-Native Species to address the species highlighted by the EA [REP4-017] question 7.12].**
- 1.115 **Response to Action Point 5(k): The Applicant has updated the outline CEMP at Section 2.8.2 to make this clarification and submits the revised plan with its Deadline 5 submissions.**
- 1.116 The Applicant confirmed it proposes to add a Requirement to the draft Development Consent Order to deliver a minimum of 10% BNG, with its proposals of over 120% BNG being a huge benefit for the ecology in the area. The Applicant confirmed its approach reflects the legal obligation that is coming for Nationally Significant Infrastructure Projects. The Applicant noted that the final level of BNG will come down to detailed design, although the Applicant expects to comfortably deliver more than 10%.
- 1.117 **Action Point 5(l): Clarify and secure any Biodiversity Net Gain to be relied on for the planning balance and justify difference in the approach compared with recent precedent including the Cottam Solar Project made Order and the Mallard Pass Solar Farm made Order.**
- 1.118 **Response to Action Point 5(l): Environmental mitigation such as hedgerows, wildflower meadows, and grassland planting have been designed into the scheme to mitigate impacts identified through the development process. While there is currently no policy/guidance requiring a specific BNG enhancement for NSIP projects, a BNG assessment was conducted to estimate the net gain the Proposed Development may deliver. The Applicant notes the requirement for TCPA projects to deliver 10% BNG and in light of this, the Applicant is willing to commit to delivering a minimum BNG enhancement that exceeds this - 20% habitat units, 10% hedgerow units, and 10% river units. The Applicant believes the Proposed Development has the potential to deliver more than this, but commits to the referenced gain to allow for sufficient flexibility for any future changes to the BNG metric and the final detailed design of the Proposed Development.**

- 1.119 **The Applicant has amended Requirement 8 of the draft Development Consent Order submitted with its Deadline 5 submissions to require the detailed LEMP to include details of how the LEMP will secure a minimum of 20% biodiversity net gain in habitats units, 10% biodiversity net gain in hedgerow units, 10% biodiversity net gain in river units during the operation of the authorised development. Securing biodiversity net gain through the LEMP aligns with the approach taken in the Mallard Pass Solar Farm made Order, Longfield Solar Farm made Order, and the Sunnica Energy Farm made Order.**
- 1.120 Following submissions by Amy Wheelton on ecology considerations relating to a haul road, the Applicant advised it was not entirely certain of the area being talked about, and that the areas effected in the Order Limits have been surveyed by professional ecologists and expertly classified and conditions assessed. The Applicant advised that any area that it is willing to look at any area pointed out to it but that it was not aware of the area described by Amy Wheelton.
- 1.121 The Applicant recognised the comment that parties should not look in isolation at species and that there is sometimes too much emphasis on GCN and skylark and stated that it should be recognised that this is a biodiverse poor habitat. It is arable farming fields, which would be turned into species rich fields by the proposed development, and the anticipated BNG of 125% is significant, and does need to be recognised. Benefits from that extend beyond benefits to GCN and skylark, and goes into invertebrates and plant life, which were not discussing in the hearing. The Applicant also reflected on Amy Wheelton's comments regarding muntjac deer and noted that they are an invasive species and have no bearing in ecology terms.

#### **Agenda Item 6 – Landscape, Visual, Glint, and Glare**

- 1.122 **Action Point 6(b): Respond to the National Forest Company's concerns [REP4-020], including whether sufficient contribution is made to the creation of the National Forest.**
- 1.123 **Response to Action Point 6(b): The Applicant's response is set out at Q9.3 of Document 13.2 (Applicant's comments on responses by IPs to ExQ2) submitted by the Applicant at Deadline 5.**
- 1.124 The Applicant confirmed that the methodology for the preparation of the visualisations is set out in Appendix 5.2: ZTV Mapping and Visualisation Methodology of the Environmental Statement [APP-101] and that much of what it would cover in the hearing is already in there. The Applicant confirmed that the visualisations follow the industry standard guidance for Landscape and Visual Impact Assessments ("LVIA"), or the "Purple Book" being GLVIA3 – 3<sup>rd</sup> Edition Guidelines on Landscape and Visual Impact Assessment ("GLVIA3").
- 1.125 The Applicant noted GLVIA3 at paragraph 8.23 states, "*Visual representations can never be the same as the real experience of the change that is to place. They are tools designed to assist all interested parties to understand how the change proposed will affect views at particularly viewpoints*", which is supported by the Landscape Institute's Technical Note TGN 06/19 Visual Representation of Development Proposals.
- 1.126 The Applicant confirmed that visualisations use digital terrain models, which are published terrain models, but do not use detailed topographical survey. In cities, a detailed topographical survey will be undertaken in addition to a digital terrain survey but not in more rural areas where the topography is simpler, and viewpoints are often further away. The Applicant noted that to use topographical surveys to produce visualisations would be disproportionate, costly and a mammoth task that would not normally be done.
- 1.127 The Applicant clarified that the topography of the application site is considered simple because it is a rolling topography, which is picked up in the digital terrain models, and does not have cuttings, ditches and pavements that, while minor, is important in a city environment when integrating a building into a small building plot where a developer would

be expected to undertake detailed topographical surveys. Item 6(a) of the ISH1 agenda asked how visualisations vary in millimetres from the height of 2.7m, and the Applicant explained that the question could not be answered in that way as it is not possible to set out variations like that.

- 1.128 The Applicant explained that cross-checks against markers were used in preparing the visualisations that show how things could vary across datasets. The Applicant clarified that these markers are like a virtual marker in a model. If you know the height and position of a fence post you can match it against other 3D features and create a digital marker in the model. The Applicant noted that inevitably there are going to be some variances and distortions because the photograph is flat and does not take into account that the landscape is not flat, and there are issues with edges, which is why a number of photographs are taken and stitched together to create visualisations.
- 1.129 The visualisations are based on the digital terrain models and the OST5 model has a Root Mean Square Error of up to 2.5m (+ / -) in any direction. The Applicant considered that in practice, it is very unlikely that the variation would be so great because if you have one point that is a bit high, the other points nearby will balance this out, but that it is why the Applicant considered it appropriate to carry out a separate cross-check using LiDAR.
- 1.130 The Applicant noted that looking at the visualisation shared on the screen during the hearing, three lines could be seen. The dark green being the lowest line of security fencing, the green line being the panel height against OST5 and the pink line being the panel height against LiDAR data. The Applicant noted these were slightly different but that broadly speaking, and given it was a close viewpoint, it is in much the same place. The Applicant expected the difference to be 30-40cm, but clarified that is not a difference in the height of the panel but of the underlying terrain, but similar to standing on a verge versus in a hollow, or one step forward versus one step back, because of the effect of perspective.
- 1.131 The Applicant confirmed that OST5 is produced by Ordnance Survey and that the LiDAR data is currently available through DEFRA and published by the Environment Agency. The Applicant confirmed that LiDAR is based on data gathered from aircraft whereas OST5 is based on terrain.
- 1.132 The Applicant confirmed it provided images for the viewpoints Diane Abbott highlighted. The Applicant drew the Examining Authority's attention to the guidance LI TGN 06/19, which discusses differences when in close proximity on page 56. The Applicant also noted that the lines on the visualisation show the difference between the horizon, and if you have solar panels on a curve, the horizon line you are seeing is not always in the same place so it might look like it is much higher but it is not, you are just seeing a different part of the image, which again is an effect of perspective and makes more of a difference when you are very close up.
- 1.133 The Applicant reiterated that is confident its visualisations can be relied upon and none of the differences are appreciable in terms of landscape and visual effects that they would lead to. The Applicant predicted a major significant level of effect dropping to moderate in the longer-term, which are the effects the Examining Authority will consider in its planning balance. The Applicant confirmed it would submit the images showing OST5 and LiDAR at Deadline 5. The Applicant also confirmed it would provide information the variations between the modelled levels and actual levels.
- 1.134 **Action Point 6(a): Quantify the difference in levels between the digital terrain model and actual ground levels and consider whether this should be demonstrated with a representative topographical survey. Provide evidence of whether the 'OST5' and 'Lidar' datasets were derived independently. Consider whether further evidence can be provided to demonstrate that the heights of the panels have been modelled correctly in relation to the heights of features in the landscape.**
- 1.135 **Response to Action Point 6(a): The Applicant's response is captured within Document 13.11 submitted by the Applicant at Deadline 5.**

- 1.136 In response to oral submissions made by Diane Abbott, the Applicant confirmed that it had rigorously checked the scaling in relation to the panels and that the reasons the visualisations do not show the panels obscuring the hedgerows is because the panels are 5m in front of the hedgerow, on lower ground. The Applicant confirmed it had provided confirmation of this and used digital markers. The Applicant reiterated that visualisations are approximations of reality, and not reality themselves, so the visualisations will never get to a point where the scheme is represented exactly as it might look.
- 1.137 The Applicant confirmed that an independent review of its Glint and Glare assessment had been undertaken, which found no concerns with the methodology taken. The Applicant confirmed that the independent review was a peer-review undertaken on behalf of South Derbyshire District Council, who raised no concerns regarding the Glint and Glare assessment.
- 1.138 **Action Point 6(c): Reconsider the responses [REP4-011] and quantitative evidence provided in response to concerns about glint and glare, including in relation to modelling reflections from mid-height of the panel rather than the top, only considering the ground floor of dwellings as possible receptors, local road users being given a low sensitivity, and significance of effect thresholds and the use of best practice guidance. Provide the details of any independent reviews undertaken of the glint and glare assessment.**
- 1.139 **Response to Action Point 6(c): The Applicant's response is captured within Document 13.12 submitted by the Applicant at Deadline 5.**
- 1.140 Before the Issue Specific Hearing closed for the day, the Applicant asked the other parties to ensure active and positive engagement in progressing and agreeing matters for Deadline 5.

#### **Agenda Item 7 – Traffic and Transport**

- 1.141 The Applicant confirmed it has been in close engagement with South Derbyshire District Council and drew the Examining Authority's attention to paragraph 3.3.1 of the outline CTMP [REP4-032], which states that Scenario 1 for the access route is preferred but if the Walton Bypass is built prior to the construction phase commencing, the Walton Bypass will be used by the Applicant. The Applicant acknowledged that the delivery of Abnormal Indivisible Loads is dealt with at paragraph 5.4.3 of the outline CTMP, which gives a firm commitment to underscore Derbyshire County Council and Leicestershire County Council's submissions to undertake a full Abnormal Indivisible Load plan once vehicle specification is known. The Applicant noted that broad principles were provided in Appendix 10.7 and that more detail will be provided in the final CTMP.
- 1.142 **Action Point 7(a): Update the Construction Traffic Management Plan to include that Walton bypass would be used if it opens during construction as well as if it opens before construction.**
- 1.143 **Response to Action Point 7(a): The Applicant will update the outline CTMP to provision that the Walton bypass would be used if it opens during construction, as well as if it opens before construction. The Applicant is close to reaching an agreed position with Staffordshire County Council on various matters, and will provide a comprehensive updated outline CTMP by Deadline 6 including in relation to use of the Walton bypass.**
- 1.144 The Applicant confirmed it is engaging with Staffordshire County Council and that Staffordshire County Council's latest submission was the result of an email exchange with the Applicant earlier that week. The Applicant considered the outstanding matters to be getting close to a stage where the Applicant and Staffordshire County Council were not going to reach agreement, particularly regarding routing. The Applicant committed to engage with Staffordshire County Council and to provide an update at Deadline 5.

- 1.145 **Action Point 7(b): Respond to Staffordshire County Council’s outstanding concerns [REP4-015].**
- 1.146 **Response to Action Point 7(b): The Applicant is in ongoing discussions with Staffordshire County Council, and parties are close to reaching an agreed position. The Applicant will provide an updated outline CTMP by Deadline 6.**
- 1.147 With reference to paragraph 5.14.18 of NPS EN-1, the Applicant referred to paragraph 5.14.21 of NPS EN-1 and clarified its position that the development addresses the first qualifying criteria in that the proposed development does not give rise to ‘substantial or severe’ traffic impacts due to embedded mitigation that limits the daily HGV demand to 14 movements per day and that an access strategy, and associated internal haul road, limits the interaction with non-motorised users on the rural highway network, aligned to careful selection of construction routes and an outline CTMP that controls, monitors and enforces construction traffic movements. .
- 1.148 The Applicant also directed the Examining Authority to paragraph 5.14.18 and paragraph 5.14.19 of NPS EN-1, and noted that the paragraphs lead in a cascade and paragraph 5.14.19 engages, or does not engage, the following paragraphs, stating “Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should consider requirements to mitigate adverse impacts on transport networks arising from the development, as set out below.” The Applicant considered the point to be the acceptability of impacts and that if the impacts can be mitigated developers are in one position, and if not, developers are in a different position. The Applicant further considered that its position is that there is not an interpretation of this policy that says regardless of the acceptability, if adequate active, public or shared transported transportation has not been provided, a development is contrary to policy. The Applicant set out how it had met the policy requirement, noting that a temporary construction Haul Road (Figure 4.1a, [APP-097]) will extend south from the delivery compound to the developable area within Oaklands Farm to enable materials and equipment to be transported internally across the Site without relying on the surrounding local highway network, and temporary construction Haul Road crossings will be provided across Coton Road (Figure 4.8: Southern Crossroads Design [APP-099]) and Rosliston Road (Figure 4.7: Rosliston Road Crossroads Design [APP-099]) to eliminate conflicts with users of the local rural road network. The Applicant also confirmed the Cross Britain Way will remain open throughout the construction and operational periods, with temporary closures, signage and/or banksmen employed to offer continued safe public access during construction with the presence of construction vehicles. The Applicant noted this was dealt with within the Public Rights of Way Management Plan. The Applicant reiterated it is providing a Permissive Path (Figure 12.2 [APP-164] that will be installed across the site to offer a new safe walking link from Lads Grave in the south of the site to Rosliston and Walton-on-Trent via the Cross Britain Way. The Applicant confirmed this route would remain open throughout the 40-year life of the project. The Applicant also confirmed that the outline CTMP includes mitigation measures that all add up to ensure there are no significant impacts to non-motorised users or other users of the highway network. The Applicant confirmed it would consider additional opportunities to provide other enhancement measures.
- 1.149 **Action Point 7(d): With reference to paragraphs 5.14.7 and 5.14.18-21 of NPS EN-1, set out the consideration given to enhancing active, public, and shared transport provision and accessibility, including in relation to local communities. Secure any enhancements to be relied on in the planning balance.**
- 1.150 **Response to Action Point 7(d): The Applicant’s response is captured within Document 13.12 submitted by the Applicant at Deadline 5.**
- 1.151 The Applicant noted that paragraph 6.4 of the oCTMP makes provision for Parish Councils and Interested Parties to feed into the Traffic Management Group. The Applicant committed to consider whether the Traffic Management Group could include considerations of active public and shared transport provision.

- 1.152 **Action Point 7(d): Consider whether enhancing active, public, and shared transport provision and accessibility should be added to the remit of the proposed Transport Management Liaison Group.**
- 1.153 **Response to Action Point 7(d): The Applicant will amend paragraphs 6.3 – 6.7 of the outline CTMP to add this to the remit of the Traffic Management Group in the comprehensive updated outline CTMP submitted by Deadline 6.**
- 1.154 The Applicant reiterated that it had undertaken to make changes to the outline CTMP so the construction hours will be consistent. The Applicant committed to reviewing to ensure that the information is consistent across all application documents. The Applicant acknowledged Diane Abbott's comment that school times differ in the area and the Applicant confirmed it has engaged through the SoCG to secure a measure to ensure appropriate school opening and closing times are factored into the CTMP. The Applicant acknowledged that representatives had noted schools have different start and end times. **At paragraph 5.9 of the outline CTMP [REP4-032] the Applicant has committed to engaging with SCC Highways and the Local Education Authority when preparing the detailed CTMP to finalise a suitable restriction period once school start and finish times within the area are established.**
- 1.155 The Applicant confirmed it would remove point AS-E1 from Schedule 8 of the draft Development Consent Order, noting that the same area is also plot 03-058, which will remain subject to Article 9 and Article 10 of the draft Development Consent Order.
- 1.156 **Action Point 7(e): Remove the provision of a permanent private means of access at the point marked AS-E1 should be removed from Schedule 8 of the dDCO.**
- 1.157 **Response to Action Point 7(e): The Applicant has removed reference to the point marked AS-E1 on Sheet 4 of the streets, access and rights of way plan from Schedule 8 of the draft Development Consent Order.**

#### **Agenda Item 8 – Other Planning Topics**

- 1.158 The Applicant recognised the burden placed on local planning authorities by the NSIP process and confirmed it had offered a Planning Performance Agreement (“PPA”) during the preparation of the application to each of South Derbyshire District Council and Derbyshire County Council, but that one was not required because the authorities secured funding from elsewhere. The Applicant reiterated the Applicant remains committed to ensuring the process is properly resourced. The Applicant confirmed that it would propose to enter into a PPA for discharge of requirements, which works well, but noted that it does not necessarily provide a formal agreement. The Applicant committed to considering this further.
- 1.159 **Action Point 8(a): Provide an update in relation to discussions about council resources for the consideration of any submissions, approvals and monitoring necessary for impact mitigation. Set out how it is proposed that any resources are secured, for example through a separate Planning Performance Agreement, and demonstrate that it is secured.**
- 1.160 **Response to Action Point 8(a): The Applicant has suggested to SDDC and DCC that the most appropriate method to secure the necessary resources for the local planning authorities is to enter into a PPA under Section 111 of the Local Government Act 1972, which provides a legally-binding, enforceable agreement between the parties. The Applicant is continuing to discuss that with the local planning authorities following Deadline 5 in order to provide an update on the position at Deadline 6.**
- 1.161 The Applicant advised that reference to archaeology was included in the Applicant's initial draft SoCG with Historic England but that this was removed at the request of Historic England during discussions on the SoCG. The reason for this is that no archaeological heritage assets within the remit of Historic England, i.e., scheduled monuments, assets of

an equivalent level of important to scheduled monuments, have been identified within the Environmental Statement as susceptible to effects from the proposed development. The Applicant confirmed this effectively meant there is no role for Historic England to speak to archaeology and that the Applicant understood archaeology to be covered by the SoCG with South Derbyshire District Council and Derbyshire County Council, as assets likely to experience effects are of lower importance and are the remit of the Derbyshire County Council archaeologist, acting as an advisor to South Derbyshire District Council. The Applicant committed to update its SoCG with Historic England to confirm that there is nothing within their remit to be included in the SoCG.

- 1.162 **Action Point 8(b): Set out whether any buried archaeology is likely to be in Historic England’s remit and therefore whether its consideration should be added to Historic England’s SoCG with the Applicant.**
- 1.163 **Response to Action Point 8(b): As noted above, Historic England advised the Applicant that, in relation to the proposed development, there was no identified archaeological assets within Historic England’s remit, and therefore it should not be included in the SOCG. This is recorded in paragraph 1.1.2 of the SoCG [REP4-056]. The Applicant is progressing further engagement with Historic England, and will look to expand upon this paragraph of the SoCG.**
- 1.164 The Applicant clarified that Historic England initially raised concerns about a wide range of assets spanning scheduled monuments, listed buildings and non-designated farm buildings. It then became clear that Historic England had not seen some of the information within the Environmental Statement. Following provision of the screened Zone of Theoretical Visibility by the Applicant to Historic England, and their subsequent site visit, Historic England clarified on 11 July 2024 that they retained some concerns about how the proposed development may alter how churches are perceived as landmarks and concerns on other listed buildings due to the presence of security measures. The Applicant noted that Historic England did not list the specific assets these concerns relate to, and has not subsequently provided this despite the Applicant’s requests for Historic England to do so.
- 1.165 Historic England had suggested further mitigation would address effects related to these measures but has not identified what mitigation, and how any further mitigation would address any harm to particular assets. The Applicant noted Historic England has cited general concerns over metal security fencing, lighting and CCTV and acknowledged it is possible that Historic England have misunderstood how extensive these elements are within the scheme design and, consequently, the potential for these to cause harm through change in the setting of heritage assets.
- 1.166 The Applicant confirmed security fencing and lighting are only to be installed around the substation and BESS compound at the centre of the site. Owing to the height of the panel arrays adjacent to the compound, the fencing would be largely screened by the panels so would not be visible beyond the immediate vicinity of the compound. The compound lighting will be motion-sensitive so would be on only when triggered by motion and not constantly on throughout the hours of darkness. These measures are restricted to the compound, which is not visible from, or in combination with, any of the heritage assets mentioned by Historic England in their most recent response. The Applicant confirmed these measures will not cause any change in the setting of assets and no harm would arise. Accordingly, no mitigation is considered necessary.
- 1.167 As regards CCTV, the Applicant considered that Historic England is envisaging something more extensive than what it is. These will be post-mounted dome cameras rather than mounted on projecting arms. The Applicant considered that CCTV will be used at locations such as the substation and BESS compound and gates and confirmed these too are not visible from, or in combination with, any of the heritage assets mentioned by Historic England in their most recent response. As such, these measures will not cause any change in the setting of assets and no harm would arise and no mitigation is considered necessary.



- 1.168 The Applicant committed to providing clarity on Historic England's position in its SoCG with Historic England.
- 1.169 **Action Point 8(c): Submission of the detail of mitigation suggested by Historic England in the SoCG for the matters not agreed. Update of progress in resolving the matters not agreed and submission of an update to the SoCG.**
- 1.170 **Response to Action Point 8(c): Historic England have not provided the Applicant with specific details of the 'further landscape mitigation' that is suggested. The Applicant has made a further request to Historic England for specific details and discussions on the same are continuing. The Applicant will provide a further update at Deadline 6.**
- 1.171 The Applicant confirmed it had already updated Requirement 18 of the draft Development Consent Order to prohibit the commencement of site preparation works requiring archaeological works until a written scheme of investigation has been submitted and approved by the local planning authority.
- 1.172 In relation to the question of whether Requirement 18 should require the carrying out of "additional trial trenching", as with the Cottam and Mallard Pass DCOs, the Applicant explained that Oaklands is very different to the situation at Mallard Pass and Cottam where, at both of those schemes, there was a clear knowledge early in the life of the scheme of the presence of complex multi-period archaeological assets and the potential for further, as yet unrecorded, assets of a comparable nature and complexity. These included assets related to later prehistoric to Roman settlement and funerary activity, with all assets having the potential to be of high importance. The Applicant noted that both schemes used geophysical survey and trial trenching to refine the understanding of the assets present and the likely impacts to provide sufficient information on these to allow determination of those schemes. The presence of a requirement for additional trial trenching in the made Orders for those schemes reflects the known continuing programme of archaeological fieldwork the assets at those schemes require. At Oaklands, although there is a high concentration of known archaeological assets on the Trent Valley floor to the west of the application site, there were few records of activity within the site itself. For this reason, geophysical survey was deployed to understand if this was a genuine blank rather than simply indicating a lack of investigation of land within the site. The Applicant confirmed the geophysical survey identified very few anomalies, e.g. readings different to what would be expected from the underlying geology, likely to indicate the presence of archaeological remains, and that they were all relatively simple enclosures or ditches and undated and not extensive. As such, the Applicant confirmed the site appears unlikely to contain archaeological assets that are extensive or of high importance.
- 1.173 The Applicant understood Derbyshire County Council shared the view that the site is unlikely to contain archaeological assets which are extensive or of high importance, as documented in Table 7.1 of the Environmental Statement. The Applicant confirmed that is why it did not agree a scope of trial trenching at that point with the Derbyshire County Council archaeologist.
- 1.174 The Applicant explained that it was not certain that trial trenching would be required, as there are opportunities for other non-intrusive assessment and evaluation methods, for example detailed analysis of historic aerial photography, which was not available at the time of the original assessment due to Covid-19 restrictions, and deployment of different geophysical survey techniques to enable design of a targeted trial trench evaluation.
- 1.175 The Applicant explained that it was concerned that if Requirement 18 specified that trial trenching must be carried out, that short-cut the process of considering non-intrusive assessment and evaluation methods, and risks committing to a programme of fieldwork that may not be required, or is more extensive than what is required. The Applicant committed to seek clarity from the Derbyshire County Council archaeologist as to why his position might have changed. The Applicant reiterated that the wording in the draft Development Consent Order requires a written scheme of investigation before any archaeological works to be part of the proposed development.

- 1.176 **Action Point 8(e): Update of the mitigation in the dDCO in relation to archaeological investigations required to inform an update to the Written Scheme of Investigation and the timing in relation to the site preparation works.**
- 1.177 **Response to Action Point 8(e): The Applicant updated the draft Development Consent Order at Deadline 4 to require the Written Scheme of Investigation to be submitted and approved prior to commencement of site preparation works involving archaeological works. As set out at the hearings, there are various non-intrusive assessment and evaluation methods which may be used, and the Applicant considers that trial trenching is likely to be disproportionate. The Applicant is seeking clarification from Derbyshire County Council's archaeologist regarding the reference to "evaluation trenching" in [REP4-012] and hopes to be able to confirm at Deadline 6 whether Requirement 18 is agreed, or to put forward an agreed, amended version of Requirement 18. The Applicant notes that references to "updating" the Written Scheme of Investigation in the Cottam Solar Project made Order and Mallard Pass Solar Farm made Order appear to have been required because a Written Scheme of Investigation had been included in the application documents. In this case, the Applicant would not expect to update the Written Scheme of Investigation after it has been submitted and approved, unless there is a change in circumstances.**
- 1.178 The Applicant clarified with the Examining Authority that Agenda Items 8 (f) and (g) were dealt with through earlier engagement with the Councils.
- 1.179 The Applicant confirmed it was engaging with East Staffordshire Borough Council in relation to air quality, and awaits a response. The Applicant committed to providing an update at Deadline 5 on this engagement.
- 1.180 **Action Point 8(h): Update on the Applicant's discussions with East Staffordshire Borough Council, including in relation to Air Quality Management Areas and compliance with paragraphs 5.2.12 and 5.2.19 of NPS EN-1. Evidence of East Staffordshire Borough Council's position.**
- 1.181 **Response to Action Point 8(h): The Applicant is still seeking a response from East Staffordshire Borough Council at Deadline 5 and will therefore provide a further update on this matter at Deadline 6.**
- 1.182 Regarding cumulative impacts, the Applicant confirmed it had received the representation from Amy Wheelton and responses from both local authorities with information on additional developments which may be relevant to the cumulative assessment.
- 1.183 The Applicant noted that the presence of new schemes is not a surprise and that it is common for the cumulative baseline to move on once an application has been submitted, with new applications being submitted and others being determined or withdrawn. The Applicant confirmed it had collated an updated list of cumulative schemes for consideration in the assessment, which included relevant schemes from Amy Wheelton and the local planning authority, including the battery storage schemes around Drakelow, and new schemes identified during the Applicant's own searches of the local planning authorities' planning portals.
- 1.184 The Applicant confirmed it had also updated the status of the schemes considered in the submitted Environment Statement, which includes the Willshee's Resource Recovery Park referred to by South Derbyshire District Council, which has now been refused.
- 1.185 The Applicant noted that with that new information it was working to update the cumulative assessment and aiming to present this to the Examining Authority at Deadline 6. The Applicant confirmed all topic specialists who input to the Environmental Statement will review that list and provide an update. The Applicant confirmed it did not anticipate this changing the findings of the assessment but that it will undertake a thorough review to confirm this. The Applicant confirmed the submission would take the form of a standalone document, and an overall conclusion would be provided on the potential changes to the

conclusions presented in the Environmental Statement. The Applicant confirmed it would look to submit this information no later than Deadline 6.

- 1.186 **Action Point 8(i): By Deadline 6, updates to the identification of cumulative projects and the cumulative impact assessments. Securing of any updates as certified documents in the dDCO.**
- 1.187 **Response to Action Point 8(i): The Applicant will respond to this Action Point on or before Deadline 6.**
- 1.188 The Applicant acknowledged that the draft Development Consent Order did not include a Requirement in relation to skills, supply chain and employment. The Applicant maintained that its position has been that the recently made solar Orders that include such a requirement are quite substantially bigger and the Applicant does not consider it reaches a threshold at which that strategy would sensibly be applied at this point. The Applicant acknowledged that it does identify socio-economic benefits arising from the development such that if the Examining Authority thought there ought to be such a Requirement, the Applicant would update the draft Development Consent Order to include this.
- 1.189 **Response to Action Point 8(j): The addition of a requirement to the dDCO in relation to skills, supply chain and employment, with reference to Requirement 17 of the Mallard Pass Solar Farm made Order and Requirement 20 of the Cottam Solar Project made Order. The submission of an outline plan.**
- 1.190 **Response to Action Point 8(j): The Applicant has updated the draft Development Consent Order to include a Requirement for the delivery of a skills, supply chain and employment plan. An outline plan will be included in the outline CEMP submitted at Deadline 6.**

#### **Agenda Item 9 – Draft Development Consent Order**

- 1.191 The Applicant confirmed that the definition of “authorised development” at Article 2 of the draft Development Consent Order should refer to section 32, rather than section 31, of the Planning Act 2008.
- 1.192 **Action Point 9(a): Update Article 2 – Interpretation – ‘authorised development’ to refer to s32 of the Planning Act 2008 (PA2008).**
- 1.193 **Response to Action Point 9(a): The Applicant has updated Article 2 of the draft Development Consent Order to include this change.**
- 1.194 The Applicant maintained its position submitted at Deadline 4 that the Applicant does not consider it necessary for any transfer under Article 5(3)(c) to be to a company with a licence under Section 6 of the Electricity Act 1989. Neither the recent DCO precedent, nor the additional precedent referred to in the Applicant’s Explanatory Memorandum, limit transfers in this way. The purpose of this Article is to protect the provision of compensation for the compulsory acquisition of rights or interests in land. The effect of Article 5(3)(c) is to permit transfer or grant of the benefit of the Order without the need to obtain Secretary of State approval where there are no outstanding actual or potential compulsory purchase claims, such that compensation protection is no longer required. Article 5(4) to (7) still requires the Secretary of State to be given advance notification of any transfer or grant. The Applicant noted its approach seemed to align with that taken in the Gate Burton Energy Park Order and the Mallard Pass Decision Letter. The Applicant confirmed it would consider its approach regarding the transfer of the benefit of the Order to a subsidiary or holding company under Article 5(3)(b).
- 1.195 **Action Point 9(c): With reference to paragraph 9.7 of the Gate Burton Energy Park decision letter and paragraph 9.4 of the Mallard Pass Solar Project decision letter, whether it should be necessary for any transfer under Article 5(3)(c) to be to a company with a licence under Section 6 (licences authorising supplies etc.) of Electricity Act 1989.**

- 1.196 **Response to Action Point 9(c): The Applicant has revised the draft Development Consent Order to remove the ability for the benefit of the Order to be transferred to a holding or subsidiary of the Applicant.**
- 1.197 The Applicant confirmed that documents to be certified within Schedule 12 of the draft Development Consent Order will include the final document and revision number.
- 1.198 **Action Point 9(d): Article 35 – Certification of plans, etc. and Schedule 12. The Applicant’s proposals to ensure that all necessary documents, including the ‘full environmental statement’, are listed in the draft Development Consent Order or in a separate certified document.**
- 1.199 **Response to Action Point 9(d): The Applicant has updated Schedule 12 to include all documents comprising the ES. The Applicant will continue to update Schedule 12 until the close of Examination as documents are updated.**
- 1.200 The Applicant confirmed it would revise the heading of Schedule 1, Part 1 to reflect other recently made Orders.
- 1.201 **Action Point 9(e): Schedule 1, Part 1 – Authorised development. Whether to avoid including anything unnecessary and for clarity, and consistency with recent precedent, the heading “In the administrative area of Derbyshire” should be removed and paragraphs 1 and 2 replaced by “1. The nationally significant infrastructure project authorised by this Order comprises a generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule –”. Reference: the Cottam Solar Project made Order.**
- 1.202 **Response to Action Point 9(e): The Applicant considers it appropriate to retain the text of paragraph 1. While not included in the Cottam Solar Project made Order, it is otherwise well preceded in Orders, including the Gate Burton Energy Park made Order, the Mallard Pass made Order, the Sunnica made Order, and the Longfield made Order. The Applicant considers it helpful to include reference to sections 14 and 15 of the Planning Act 2008, to ensure it is clearly demonstrated on the face of the Order which category of Nationally Significant Infrastructure Project the authorised development falls within, and to include reference to section 115 of the Planning Act 2008, to ensure it is clearly demonstrated on the face of the Order that the Order authorises associated development. The Applicant considered combining the text of paragraphs 1 and 2 into a single paragraph, but noted that actioning this change would result in a renumbering of the Requirements to the extent that the draft Development Consent Order, Environment Statement and Management Plans would require significant updating if this change was made, which was not considered necessary or proportionate. The Applicant has captured revised wording in paragraph 2 to align with the Cottam Solar Project made Order, and has moved the reference to the “administrative area of Derbyshire” into paragraph 1 for consistent with the other precedent DCOs.**
- 1.203 The Applicant confirmed it would revise Requirement 8 (landscape and ecological management plan) to require the LEMP to be approved by the local planning authority in consultation with Natural England, and not the Environment Agency.
- 1.204 **Action Point 9(f): Requirement 8 – Landscape and Ecological Management Plan. Removal of the need for the Landscape and Environmental Management Plan to be submitted to and approved by the EA.**
- 1.205 **Response to Action Point 9(f): The Applicant has revised Requirement 8 accordingly.**
- 1.206 **Action Point 9(g): removal of the need for the Landscape. Update the end of the first sentence of Requirement 8(4) to read “...has been submitted to and approved by the local planning authority in consultation with Natural England.”**

- 1.207 **Response to Action Point 9(g): The Applicant has revised Requirement 8(4) accordingly.**
- 1.208 The Applicant confirmed it would revise Requirement 8(3) (landscape and ecological management plan), Requirement 11(3) (operational environmental management plan), Requirement 15(2) (operational noise) and Requirement 17 (surface and foul water drainage) to align with recently made Orders.
- 1.209 **Action Point (g)(i)(j)(k): Requirement 8 – Landscape and Ecological Management Plan. Requirement 11 – Operational Environmental Management Plan. Requirement 15 – Operational noise. Requirement 17 – Surface and foul water drainage. The addition of provisions to clarify the maintenance of mitigation measures during operation, consistent with the Cottam Solar Project made Order.**
- 1.210 **Response to Action Point (g)(i)(j)(k): The Applicant has revised these Requirements accordingly.**
- 1.211 The Applicant confirmed that the replacement of solar panels during the operational period of the development was regulated by the definition of “maintain” in Article 2 of the draft Development Consent Order, which includes replacement of any part of the authorised development “*provided that these do not give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement*”. The Applicant noted the power to maintain the authorised development is granted by Article 4 of the draft Development Consent Order and the Applicant is therefore limited by that definition in Article 2. The Applicant acknowledged the Examining Authority was looking for additional firmness within the outline OEMP.
- 1.212 **Action Point 9(h): Improve the precision and firmness of measures in Section 3.1.4 of the Operational Environmental Management Plan in relation to solar panel replacement during operation, either in terms of the rate of panel replacement or a proxy of heavy goods vehicle movements.**
- 1.213 **Response to Action Point 9(h): The Applicant has updated Section 3.1.4 of the outline OEMP to provide additional certainty on the replacement of solar panels during the operational life of the proposed development.**
- 1.214 The Applicant confirmed that battery replacement generally involves the cells within the battery unit, so that would be a manual job that does not require HGVs. Regarding the culverts and the haul track, the Applicant confirmed it would provide more detail following discussions had in the hearings, but explained that the intention had been that the culverts would remain in place to facilitate the delivery of those elements, the panels, the BESS and, once construction completed, the haul road would be removed and the culverts would either remain in situ or be removed. The Applicant confirmed the culverts were there in the event that through the operation of the project there would be another means for large loads if needed to reinstate the haul road, but the typical elements of the site will be serviced by smaller vehicles. **As noted at paragraph 1.6 above, the Applicant has determined that temporary culverts will be used in compliance with existing policy.**
- 1.215 The Applicant confirmed it was content for Requirement 22(4) to provide for approval in consultation with the Environment Agency. The Applicant noted that Natural England had not yet set out its position. The Applicant committed to revise Requirement 22(4) to provide for approval in consultation with the Environment Agency and Natural England.
- 1.216 **Action Point 9(l): Requirement 22 – Decommissioning and restoration. Updated Requirement 22(4) to include for approval in consultation with the EA and NE.**
- 1.217 **Response to Action Point 9(l): The Applicant has revised Requirement 22(4) accordingly.**