



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Mallard Pass Solar Farm

Examining Authority's Report
of Findings and Conclusions

and

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

Examining Authority

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16 February 2024

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OVERVIEW

File Ref: EN010127

The application, dated 24 November 2022, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 24 November 2022.

The applicant is Mallard Pass Solar Farm Limited.

The application was accepted for examination on 21 December 2022.

The examination of the application began on 16 May 2023 and was completed on 16 November 2023.

The development proposed comprises the construction, operation and maintenance, and decommissioning of a solar farm that would allow for the generation and export of electricity exceeding 50 megawatts (MW) on approximately 825 ha of land within Lincolnshire, South Kesteven and Rutland. The principal components of the Proposed Development comprise the following:

- PV modules;
- Mounting structures;
- Invertors;
- Transformers;
- Switchgear;
- Onsite substation and ancillary buildings;
- Low voltage distribution cables;
- Grid connection cables;
- Fencing, security and ancillary infrastructure;
- Access tracks; and
- Green infrastructure.

Summary of Recommendation:

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

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ERRATA SHEET – Mallard Pass Solar Farm Ref. EN010112

Examining authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department for Energy Security and Net Zero (dated 19 September 2023)

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

PDF Page No.	Paragraph	Error	Correction
83	3.6.4	“Both <u>2001</u> EN-1”	“Both <u>2011</u> EN-1”
88	3.6.35	The RVAA states that potential effects may include being <u>surrounding</u> by the Proposed Development to the extent that there is a visual overwhelming of the visual amenity from a residential dwelling, or that it is so visually prominent that it is overly intrusive.	Should say <u>surrounded</u> .
123	3.8.25	“LCC <u>does</u> raises no specific impacts regarding noise or vibration in its LIR.”	“LCC does raises no specific impacts regarding noise or vibration in its LIR.”
140	3.9.80	“Traffic disruption from construction workers would be minimised and managed through measures detailed in the outline Travel Plan and CTMP”	Should have a full stop at the end.
151	3.10.35	“The primary construction compound	“The primary construction compound is proposed to

PDF Page No.	Paragraph	Error	Correction
		is proposed to benefit from a 10.2m width carriageway to enable two-way access <u>the access.</u> "	benefit from a 10.2m width carriageway to enable two-way access the access. "
185	3.12.24	"In addition, MPAG <u>concern</u> regarding the Applicant's consideration of the time period over which a net carbon benefit would be derived."	"In addition, MPAG <u>remained concerned</u> regarding the Applicant's consideration of the time period over which a net carbon benefit would be derived."
185	3.12.24	"It considered that the Applicant should have assessed the 60-year period on a 30+30 basis to reflect <u>that</u> it considered to be a more realistic lifespan of PV panels."	"It considered that the Applicant should have assessed the 60-year period on a 30+30 basis to reflect <u>what</u> it considered to be a more realistic lifespan of PV panels."
186	3.12.32	"The SoS should assess the impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure (3.10.149). <u>Although</u> notes that there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety (3.10.150)."	"The SoS should assess the impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure (3.10.149), <u>although the NPS</u> notes that there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety (3.10.150)."
187	3.12.39	"No objections have been received and are satisfied with the Applicant's findings."	"No objections have been received and <u>the ExA [or 'we']</u> are satisfied with the Applicant's findings."
188	3.12.51	"matters relating to waste do not therefore weigh against the Order being made"	"matters relating to waste do not therefore weigh against the Order being made <u>and is neutral in the planning balance</u> "

PDF Page No.	Paragraph	Error	Correction
189	3.12.57	"this matter does not weigh against the Order being made"	"this matter does not weigh against the Order being made <u>and is neutral in the planning balance</u> "
191	3.13.10	"the combined effects on residential living conditions do not weigh significantly against the Proposed Development"	"the combined effects on residential living conditions do not weigh significantly against the Proposed Development <u>and has little negative weight in the planning balance.</u> "
211	5.3.2	"And minor socio-economic benefits"	"and minor socio-economic benefits <u>in terms of employment and GVA</u> "
269	8.2.11	"the extent to which <u>there</u> are relevant is a matter for the SoS to consider."	"the extent to which <u>they</u> are relevant is a matter for the SoS to consider."

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. The Application for the Mallard Pass Solar Farm (the Proposed Development) was submitted by Mallard Pass Solar Farm Limited (the Applicant) to the Planning Inspectorate on 24 November 2022 under section 31 of the Planning Act 2008 (PA 2008) and accepted for Examination under section 55 of the PA 2008 on 21 December 2022 [[PD-001](#)].
- 1.1.2. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Energy Security and Net Zero.
- 1.1.3. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for the Department for Levelling Up, Housing and Communities in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [[PD-001](#)].
- 1.1.4. The Proposed Development is an NSIP as it comprises an onshore electricity generating station with a capacity of more than 50 megawatts (MW) and falls within s15(2) of the PA2008. It therefore requires development consent in accordance with s31 of the PA2008.
- 1.1.5. The [Examination Library](#) (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number e.g. [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 19 January 2023, David Cliff was appointed as the Examining Authority (ExA) for the application under s61 and s79 of PA2008 [[PD-004](#)]. On 12 April 2023, a change of appointment was made from a single examiner to a Panel of examiners under s62 of the PA2008. Under s65 of the PA2008, David Cliff was appointed as Lead Member of the Panel and Mark James was appointed as second member of the Panel [[PD-005](#)].

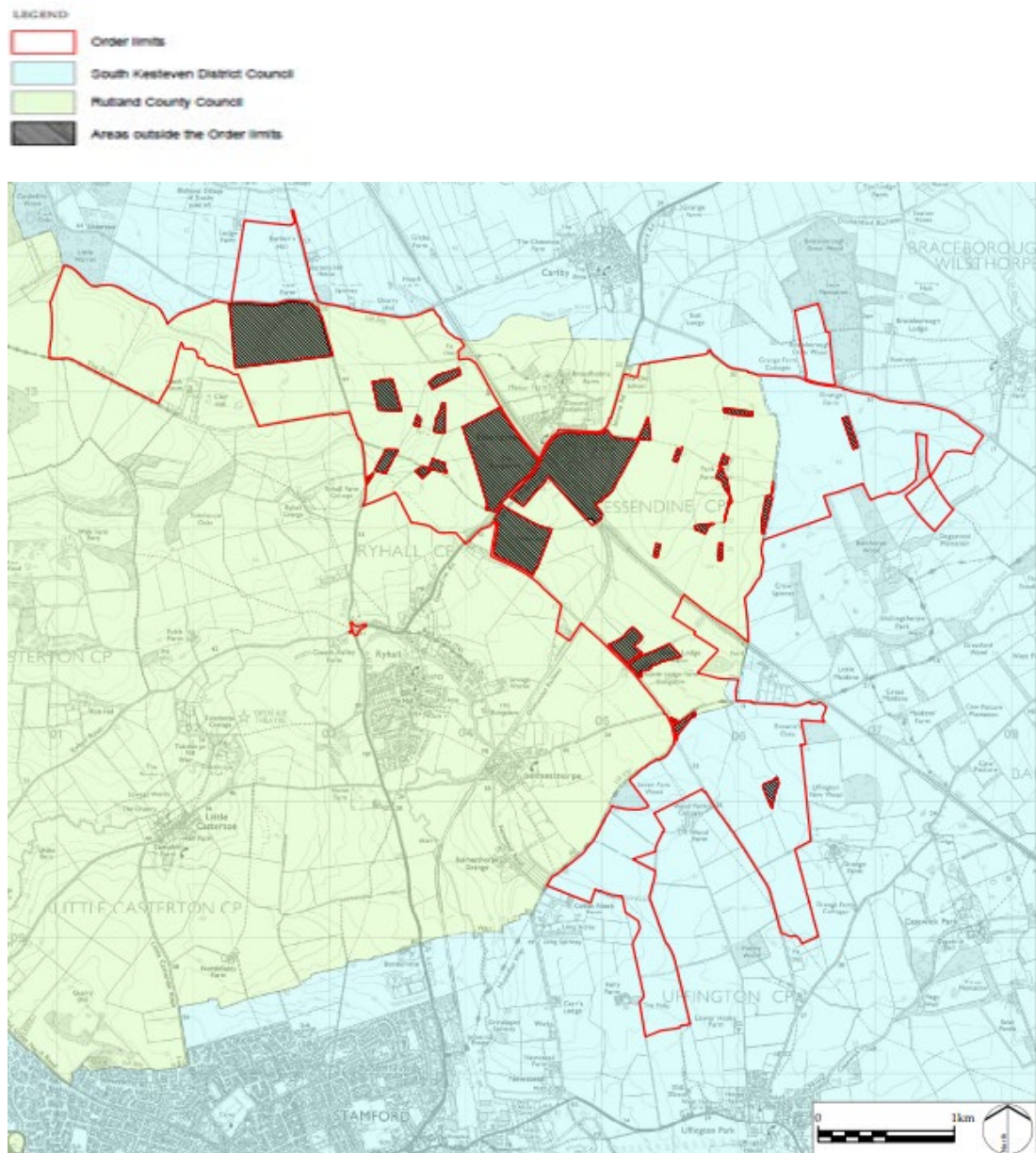
1.3. THE APPLICATION

Site location and its surroundings

- 1.3.1. The Order limits comprise approximately 852ha of land. 525ha is located within the administrative area of Rutland County Council (RCC) and 327ha within the administrative area of South Kesteven District Council (SKDC) and Lincolnshire County Council (LCC) [[APP-108](#)]. This is shown on Figure 1 below – noting it does not show the small part of the Order limits for highway works in Great Casterton). The final Land Plans

[[REP9-004](#)] show full detail of the location of the Order limits, including Great Casterton.

Figure 1: Location of Order limits and administrative boundaries



- 1.3.2. Figure 3.2 (Field Numbering System) of the Environmental Statement (ES) [[APP-112](#)] provides a reference number for each field parcel within the Order limits. These will be referred to where relevant within the report.
- 1.3.3. Chapter 3 of the ES provides a detailed description of the Order limits [[APP-033](#)]. It is predominantly comprised of arable agricultural fields with a network of hedgerows, water features and field margin habitats. There are areas of woodland scattered across the area of the site but these have not been included within the Order limits. The area within and surrounding the Order limits is gently to moderately undulating, ranging from 16-67 metres above Ordnance Datum.

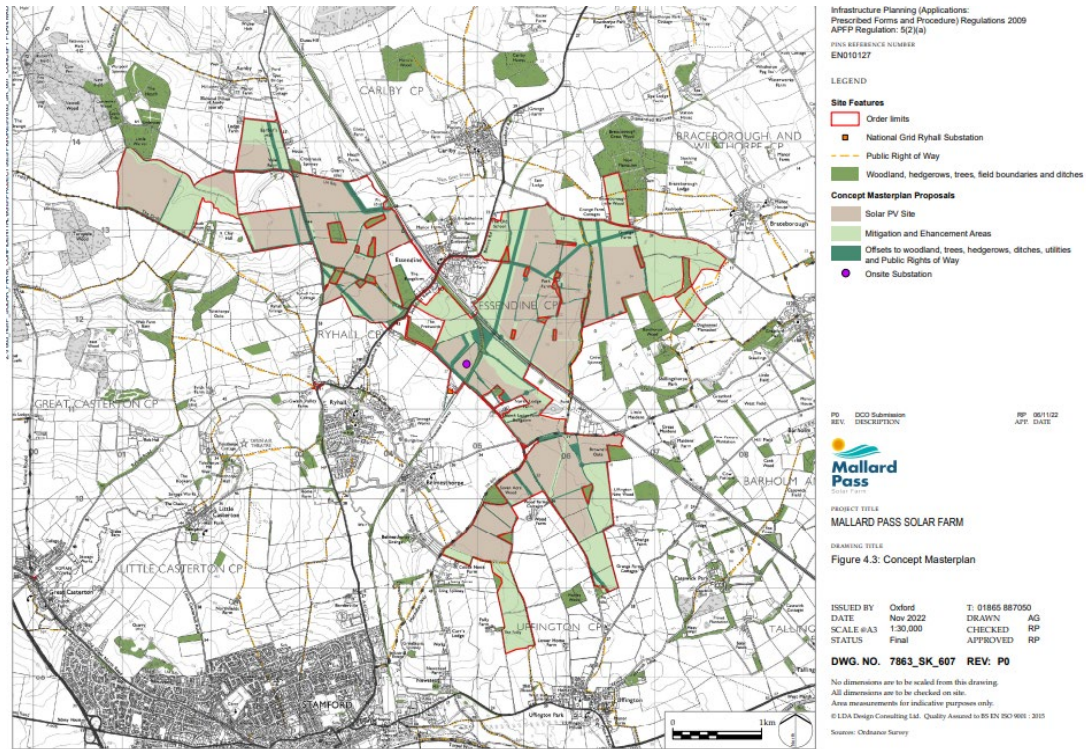
- 1.3.4. The East Coast Main Line Railway runs diagonally from south-east to north-west through part of the Order limits. The West Glen River runs across the Order limits in a generally south-easterly direction. Six Public Rights of Way cross the Order limits [[REP7-006](#)]. An existing National Grid sub-station (to which the Proposed Development would connect) is located on Uffington Lane to the north-east of Ryhall.
- 1.3.5. Several villages and settlements are located in proximity of the Order limits, including Essendine (which is located broadly in the middle of the different parts of the Order limits), Carlby, Braceborough, Uffington, Belmesthorpe, Greatford, Pickworth and Great Casterton.

Description and details of the Proposed Development

- 1.3.6. The Proposed Development comprises the construction, operation and maintenance, and decommissioning of a solar photovoltaic array electricity generating facility with a total capacity exceeding 50 MW and export connection to the National Grid.
- 1.3.7. Full details of the Proposed Development are set out in Chapter 5 (Project Description) of the ES [[REP2-012](#)]. Further details of each Work Number (including relevant definitions) are also set out in Schedule 1 (Authorised Development) of the Applicant's final draft Development Consent Order (DCO) [[REP9-005](#)].
- 1.3.8. In brief, the Proposed Development includes the following work packages:
- Work No.1: A ground mounted solar photovoltaic generating station (including solar modules fitted to mounted structures, invertors, transformers, switchgear and electrical cables);
 - Work No.2: Onsite substation (near the existing National Grid Ryhall substation) including transformers, switchgear, control buildings, ancillary buildings and metering equipment as required to facilitate the export of electricity from the Proposed Development to the National Grid;
 - Work No.3: Works to lay high voltage electrical cables, access and temporary construction compound laydown areas for the electrical cables, to connect to the existing Ryhall substation;
 - Work No.4: Works to lay electrical cables including electrical cables connecting Work No.1 to Work No.2;
 - Work No.5: Temporary construction and decommissioning compound and laydown areas;
 - Work No.6: Works to facilitate access to Work Nos. 1 to 5; and
 - Work No.7: Works to create, enhance and maintain green infrastructure.
- 1.3.9. The Associated Development for the purposes of section 115 of the PA2008 includes Works Nos. 2 to 7 of the Proposed Development. Schedule 1 of the final draft DCO also includes, listed as (a) to (n), further associated development in connection with Work Nos. 1 to 7, insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the ES.

1.3.10. The final Works Plans [REP7-005] set the spatial extent of each Work described above. The general layout of the Proposed Development, including the areas for solar PV arrays, location of the proposed onsite substation, and the mitigation and enhancement areas is shown in Figure 4.3 (Concept Masterplan) of the ES [APP-115].

Figure 2: Concept Masterplan



1.3.11. Another useful drawing to help gain an understanding of the overall scheme is Figure 3.1 of the ES [APP-111] showing the extent of the Order limits, solar PV site, mitigation and enhancement areas and potential highway works.

1.3.12. The area of land occupied by the development footprint, including the solar PV site and onsite substation, would amount to approximately 426 hectares with the remaining area retained, some of it in arable use, as part of the proposed landscape mitigation and enhancement measures. This is shown on the Green Infrastructure Strategy Plan [APP-173].

1.3.13. Section 5.2 (Project description) of the ES [REP2-012] explains the Applicant’s approach to project parameters and the Rochdale Envelope. It explains that it is important to note that the exact details of the Proposed Development cannot be confirmed until the tendering process for the design has been completed and the detailed design has been approved by the local planning authorities. This is to allow for flexibility to accommodate changes in technological advancements. The Applicant has therefore adopted the Rochdale Envelope approach which involves specifying parameter ranges (including size, technology and locations) where flexibility needs to be retained. This is used to present a worst-case assessment of the potential environmental effects of the Proposed

Development. We note that the Rochdale Envelope is an established and accepted approach for applications made under the PA2008.¹

- 1.3.14. To assist with the assessment, Design Guidance and Design Principles have been developed by the Applicant to guide (within set parameters) the size, type and colour of elements of the Proposed Development along with the securing of mitigation that has been identified through the EIA process.
- 1.3.15. The Proposed Development Parameters [[REP7-013](#)] set out the parameters for the detailed design of the Proposed Development, which would be secured by Requirement 6 (Detailed design approval) of the draft DCO [[REP9-005](#)]. Whilst the draft DCO does not include an installed generating capacity, the parameters applied for allow for the installation of up to 350 MW(DC) based on an indicative layout which the Applicant states is deliverable within those parameters.
- 1.3.16. The Applicant proposes two options for the design of the mounting structures. The first option, Fixed South Facing Arrays, would be orientated east/west and would be installed between 18 and 25 degrees to the horizontal, facing south to optimise daylight absorption. The second option, Single Axis Tracker Arrays, would be orientated north/south and would track between zero and 60 degrees, facing east in the morning and west in the evening.
- 1.3.17. The location of the proposed primary and secondary temporary construction compounds are shown on Figure 5.12 of the ES [[APP-132](#)].
- 1.3.18. Illustrative material has been provided to assist with the interpretation of the Rochdale Envelope. These are for illustrative proposes only rather than providing fixed details of the Proposed Development. These include:
- Illustrative Development Layouts for the different PV Array options [[APP-116](#), [APP-117](#), [APP-118](#) & [APP-119](#)];
 - Illustrative elevations for fixed south facing and single axis tracker arrays [[APP-120](#)];
 - Illustrative onsite substation layout [[APP-125](#)]; and
 - Illustrative fencing and access gate elevation [[APP-129](#)].
- 1.3.19. The construction of the Proposed Development would be anticipated to commence, at the earliest, in summer 2026. The Applicant expects that the construction period would take an estimated 24 months, with operation therefore anticipated to commence around summer 2028. The final programme will be dependent on the detailed layout design and potential environmental constraints on the timing of construction activities.
- 1.3.20. Decommissioning of the Proposed Development, including the onsite substation, would need to be carried out in accordance with a Decommissioning Environmental Management Plan (DEMP), to be

¹ Planning Inspectorate's Advice Note Nine: Rochdale Envelope (July 2018)

approved by the relevant planning authority in accordance with the final outline DEMP [[REP10-008](#)].

Relevant planning history

- 1.3.21. Bearing in mind the arable agricultural use of much of the site, there is limited planning history of any relevance to the determination of the Proposed Development. The existing Ryhall Substation on Uffington Lane was granted planning permission in 2013.
- 1.3.22. Appendix 2.4 of the ES [[APP-052](#)] provides details of the long list of other developments within the Applicant's search area for the purposes of its assessment of cumulative effects. This was updated with relevant schemes during the Examination [[REP6-004a](#) and [REP9-025](#)].
- 1.3.23. During the Examination reference was made to previous decisions further to other development consent applications and other planning permissions for solar farms elsewhere. These will be referred to where relevant and necessary in this report.
- 1.3.24. There are several other current or proposed solar NSIP schemes within 100km of the Mallard Pass site. These include [Little Crow](#) which was granted Development Consent in April 2022 and schemes at [Heckington Fen](#), [Gate Burton](#), [West Burton](#) and [Cottam](#) which are currently at either Examination or reporting stage. No other relevant planning history has been identified in the Local Impact Reports.

1.4. THE EXAMINATION

Relevant Representations

- 1.4.1. A total of 1223 [Relevant Representations \(RR\)](#) have been received by the Planning Inspectorate about the application. The very large majority of these are opposed to the Proposed Development with 36 of the RR expressing support for it. The Applicant provided its written response to the RR at Procedural Deadline A in advance of the Examination [[PDA-012](#)] including summaries of the RR made.
- 1.4.2. All RRs have been considered by the ExA. The main issues that they raise are considered in the relevant topic specific sections of this report. As a general guide, a brief summary of common themes raised in the RR is set out below (these are not set out in any order of priority or importance):
 - Concerns regarding the need for and benefits of the Proposed Development.
 - Concerns regarding site selection, including a preference for brownfield sites in comparison to this site.
 - Preference for alternative forms of energy to solar.
 - Concerns regarding the large and unprecedented scale of the Proposed Development resulting in large impacts on the surrounding area.

- Loss of and effect upon agricultural land including Best and Most Versatile (BMV) land.
- Adverse effects upon food production and food security.
- Increased flood risk for surrounding properties and villages, including from surface water run-off.
- Adverse effects on the landscape and visual amenity of the area, including the character of the rural landscape.
- Harmful effects from glint and glare (including for residents, transport and recreational users).
- Visual impacts on nearby residential properties.
- Harm to local wildlife, habitats and biodiversity.
- Adverse traffic implications including congestion and safety impacts on local roads during construction, effects on local residents and wildlife, and damage to roads.
- Adverse effects on health and wellbeing of local residents.
- Adverse effects on the local economy, including property prices.
- Harm and disruption to local footpath network and recreational users.
- Harm to tourism in the area.
- Adverse effects upon archaeological remains and surrounding heritage assets.
- Soil compaction and resulting implications.
- Contamination effects.
- Lack of benefits to the local community.
- Concerns regarding carbon footprint and climate change implications, including from the sourcing of panels.
- Concerns linked with the sourcing of panels from China, including potential use of forced labour.
- Adverse effects from noise during construction and operation.
- Adverse air quality effects.
- Increase in pollution and contaminants.
- Concerns regarding how lack of operational time limit and how the Proposed Development would be decommissioned.
- Concerns regarding Compulsory Acquisition of land, including for properties/verges in Essendine as a result of a proposed cable route option.
- Loss of access to residential and business properties during construction.

The Preliminary Meeting and Examination Timetable

- 1.4.3. The Preliminary Meeting (PM) took place on 16 May 2023 [[EV-005a](#)]. The ExA's subsequent Procedural Decisions and the Examination Timetable took account of matters raised before and at the PM. Full details of these were provided in our Rule 8 Letter [[PD-007](#)] dated 23 May 2023.
- 1.4.4. Some minor revisions were made in October 2023 to the later part of the Examination Timetable [[PD-015a](#)], including an invitation for Interested Parties and the Applicant to make closing summary statements at the final deadline.

1.4.5. The Examination began on 16 May 2023 and concluded on 16 November 2023. The principal components of the Examination can be seen in the [Examination Timetable](#) and are set out below.

Procedural decisions

1.4.6. All the Procedural Decisions taken by the ExA (and other notifications) are recorded in the Examination Library [[PD-001](#) to [PD-019](#)]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.

Statements of Common Ground

1.4.7. By the close of the Examination, the following parties had concluded and signed Statements of Common Ground (SoCG) with the Applicant:

- Anglian Water [[REP4-032](#)]
- Environment Agency [[REP9-017](#)]
- Historic England [[REP9-018](#)]
- Lincolnshire County Council [[REP9-020](#)]
- Lincolnshire Wildlife Trust [[REP4-034](#)]
- Mallard Pass Action Group [[REP9-023](#)]
- National Highways [[PDA-010](#)]
- Natural England [[REP9-019](#)]
- Rutland County Council [[REP9-022](#)]
- South Kesteven District Council [[REP9-021](#)]

1.4.8. All the signed SoCGs have been considered by the ExA in the relevant sections of this report. The final Statement of Commonality of Statements of Common Ground [[REP9-015](#)] provides a summary of the positions reached in the SoCG.

Mallard Pass Action Group (MPAG)

1.4.9. The SoCGs listed above including one with MPAG. MPAG played a prominent role in the Examination in representing local residents. Details of the group were provided at Deadline 2 [[REP2-088](#)] setting out its structure, aims and policies. MPAG submitted numerous written and oral representations throughout. Its RR [[RR-0676](#)], Written Representation [[REP2-090](#)] (to which there are also several appendices) and Closing Submissions [[REP10-024](#)] are provided here for reference.

Written Processes

1.4.10. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All of this material is recorded in the [Examination Library](#). For this reason, our Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

- 1.4.11. During the Examination the Applicant, Interested Parties and Other Persons were provided with opportunities to make written submissions including Written Representations, respond to the ExA's Written Questions (ExQ) and requests for information, summaries of oral submissions at hearings and to comment on the submissions of others. All Written Representations and other examination documents have been fully considered by the ExA.
- 1.4.12. Closing submissions were made in writing by the Applicant and several IPs at Deadline 10, including from SKDC, LCC, MPAG, Parish Councils, Campaign to Protect Rural England and local residents.
- 1.4.13. The main issues that have been raised are considered in the relevant sections of this Report.
- 1.4.14. The ExA asked two rounds of written questions (ExQ1 [[PD-008](#)] and ExQ2 [[PD-014](#)]). Two requests for further information and comments were made by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 [[PD-017](#) and [PD-018a](#)]. Towards the end of the Examination we also issued the ExA's commentary and questions on the draft Development Consent Order [[PD-018](#)].

Hearings

- 1.4.15. The following Open Floor Hearings (OFH), Issue Specific Hearings (ISH) and Compulsory Acquisition Hearings (CAH) were held (set out in chronological order):
- OFH1 and 2 (17 May 2023) [[EV-018](#)]
 - ISH1 on Scope of the Proposed Development, Need, Site Selection and Alternatives (11 July 2023) [[EV-014](#)]
 - ISH2 on Environmental Matters (12 and 13 July 2023) [[EV-015](#)]
 - ISH3 on draft DCO (13 July 2023) [[EV-016](#)]
 - CAH1 on 14 July 2023 [[EV-017](#)]
 - CAH2 on 26 September 2023 [[EV-052](#)]
 - ISH4 on Environmental Matters (26 and 27 September 2023) [[EV-053](#)]
 - ISH5 on Environmental Matters and the draft DCO (28 September 2023) [[EV-054](#)]
- 1.4.16. Agendas, recordings and transcripts for all of the above hearings can be downloaded from the Events and Hearings section of the [Examination Library](#).

Site inspections

- 1.4.17. We carried out several Site Inspections to ensure that we have an adequate understanding of the Proposed Development within its site and surroundings along with its physical and spatial effects. These included one accompanied [[EV-050](#)] and three unaccompanied [[EV-001](#), [EV-001a](#) and [EV-001b](#)] site inspections. We have had regard to the information and impressions obtained during the site inspections in all relevant sections of this Report. Our accompanied site inspection included visits to

several residential located in proximity of the Order limits, further to requests from IPs and MPAG.

Requests to Join and Leave the Examination

- 1.4.18. Before the Preliminary Meeting, requests were made under section 102A of PA2008 by Richard Williams, Christopher Williams and Robert Ian Williams to become IPs. These were all accepted by the ExA [[PD-009](#), [PD-010](#) and [PD-011](#)] allowing them to join the Examination after the Preliminary Meeting.
- 1.4.19. Although not formally requesting to leave the Examination, Network Rail Infrastructure Limited (NR) confirmed [[AS-018](#)] during the Examination its withdrawal of its objection on the basis of the protective provisions agreed with the Applicant being included in the DCO. Notwithstanding this, matters relating to NR are considered in Chapters 5 and 6 of this Report.
- 1.4.20. Again, without formally requesting to leave the Examination, National Grid Electricity Distribution (East Midlands) plc also wrote [[REP5-077](#)] to confirm its withdrawal of its objection to the Order being granted having reached agreement on the commercial terms for the protection of its assets and an asset protection agreement.

1.5. CHANGES TO THE APPLICATION

- 1.5.1. No formal 'change requests' to the Proposed Development were made by the Applicant during the Examination.
- 1.5.2. Updates to the key application documents, including the wording of the draft DCO, were submitted and updated during the Examination. The changes sought to address points raised during the Examination and to update or provide additional information resulting from discussions that occurred during the Examination.
- 1.5.3. The Applicant's changes to the Application documents, together with any additional information submitted, are set out in the Applicant's Guide to the Application Version 12 [[REP10-002](#)]. This provides a guide to all documents submitted as part of the Application and was updated at each deadline when new or revised documents were submitted.
- 1.5.4. At Deadline 5, the Applicant confirmed in its responses to ExQ2 [[REP5-012](#)] that it was proposing a 60-year operational time limit through Requirement 18 (Decommissioning and restoration) of the final draft DCO [[REP9-005](#)]. There was previously no operational time limit proposed. At Deadline 7, the Applicant submitted a Statement on 60-Year Time Limit [[REP7-038](#)] which sets out an appraisal of the change from permanent operation to a time limited operation, on each topic assessed within the ES. This matter is considered further in the relevant sections of our Report.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.6.1. There are no relevant s106 agreements that have been or are proposed to be entered into in association with the Proposed Development. The Applicant has proposed and is in discussions with the relevant Highway Authorities about separate 'side agreements' replicating the S278 Agreement process that would be entered into with regard to details of proposed Highways Works. The final SoCG with LCC [[REP9-020](#)] states that these side agreements will continue to be negotiated with the aim of updating the Secretary of State prior to the decision being made.
- 1.6.2. Some parties have confirmed that, during the Examination, they have reached private agreements with the Applicant regarding protection of their assets and/or interests. There are referred to, where relevant, in subsequent sections of this Report.

1.7. OTHER CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. These are set out in the Applicant's document 'Other Consents and Licences' [[APP-019](#)].

1.8. STRUCTURE OF THIS REPORT

- 1.8.1. The structure of the remainder of this report is as follows:
- **Chapter 2** summarises the key legislation and policy context.
 - **Chapter 3** sets out the findings and conclusions in relation to the planning issues that arose from the Application and during the Examination.
 - **Chapter 4** provides a summary of the Habitats Regulations Assessment (HRA).
 - **Chapter 5** sets out the balance of planning considerations arising from Chapters 3 and 4, in the light of the factual, legal and policy considerations.
 - **Chapter 6** sets out the ExA's examination of land rights and related matters.
 - **Chapter 7** considers the implications of the matters arising from the preceding chapters for the DCO.
 - **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- 1.8.2. This report is supported by the following Appendices:
- **Appendix A** – Relevant policies and legislation
 - **Appendix B** – The Environmental Statement
 - **Appendix C** – List of abbreviations
 - **Appendix D** – The recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter sets out the key legislation, national and local policy and Local Impact Reports (LIR) that are pertinent to the Examining Authority's (ExA) recommendations to the Secretary of State (SoS). It also specifies how Environmental Impact Assessment (EIA), Habitats Regulations Assessment (HRA) and transboundary effects related matters have been considered.

2.2. LEGISLATION AND POLICY

2.2.1. This section provides an overview of legislation and policy that the ExA considers to be important and relevant. A full list of legislation and policies considered in this report is provided in Appendix 1.

2.3. KEY LEGISLATION

The Planning Act 2008

2.3.1. The Planning Act 2008 (PA2008) provides legislation for the consideration of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIP).

2.3.2. The PA2008 sets out two different decision-making procedures for NSIP applications depending on whether a relevant National Policy Statement (NPS) has effect or not. Section 104 (s104) of the PA2008 considers decisions in cases where an NPS has effect. Conversely, s105 makes provision for decisions in cases where no NPS has effect.

2.3.3. There is no designated NPS that has effect in relation to this Application (noting the transitional arrangements in recently published 2024 EN-1). Solar generation was not included in the scope of the Overarching NPS for Energy (EN-1) or the NPS for Renewable Energy Infrastructure (EN-3) as designated in 2011. As such, the application falls to be considered under the provisions of s105 of the PA2008 which requires the SoS to have regard to the following:

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

2.3.4. Details of relevant policies and other legislation considered pertinent to the Proposed Development, including the Climate Change Act 2008 (as amended) Human Rights Act 1998 and Equality Act 2010 is provided at Table A1 of Appendix A.

2.4. NATIONAL POLICY STATEMENTS

Background

- 2.4.1. NPSs specify Government policy on different types of national infrastructure development. NPS EN-1 (July 2011) provides the overarching policy for energy NSIPs and is accompanied by five technology specific NPSs, including the NPS for Renewable Energy Infrastructure (EN-3) and NPS for Electricity Networks (EN-5). A summary of these NPSs as designated in July 2011 and subsequent revised drafts published in March 2023 is provided below.
- 2.4.2. Revised drafts of NPS EN-1, NPS EN-3 and NPS EN-5 were published for consultation in March 2023 and these versions were therefore before the parties and subject to consideration during our Examination which closed on 16 November 2023.
- 2.4.3. Specific policy requirements contained within the NPSs are considered in Chapter 3 of this report where they are considered important and relevant.
- 2.4.4. On 22 November 2023, after the close of the Examination, a further iteration of the suite of draft energy NPSs was published and subsequently the revised NPS's came into force on 17 January 2024 but are only designated for applications accepted after that date. These versions were not before the Examination and so neither the Applicant nor IPs have had the opportunity to comment on any implications of them.
- 2.4.5. As they were not before the Examination, we have not had regard to the post-Examination versions in our consideration of the planning issues in Chapters 3 and 5 of this report. Our recommendation takes into account as important and relevant considerations the designated July 2011 EN-1 and the draft March 2023 versions of EN-1, EN-3 and EN-5. We go on to comment on the potential implications of the 2024 suite of NPSs in Chapter 8.
- 2.4.6. For the avoidance of doubt, references in the remainder of this report to the 2011 EN-1 relate to the NPS EN-1 designated in July 2011. References to the 2023 draft EN-1, EN-3 or EN-5 relate to the March 2023 draft versions.

Overarching National Policy Statement for Energy (EN-1)

- 2.4.7. The 2011 EN-1 sets out the role of renewable and other sources of electricity generation. It also provides assessment principles and outlines policy for the consideration of generic impacts that may apply across energy NSIPs.
- 2.4.8. Paragraph 1.4.5 of 2011 EN-1 states that the generation of electricity from renewable sources other than wind, biomass or waste are not included within the scope of 2011 EN-1 although solar is recognised as an intermittent source of renewable energy at paragraph 3.3.11. As

such, the Proposed Development is excluded from the scope of 2011 EN-1, hence, the Examining Authority's (ExA) view that 2011 EN-1 does not have effect in terms of s104 of the PA2008.

- 2.4.9. However, given that the policies contained within 2011 EN-1 are intended for NSIP scale energy generating stations, they can have a bearing on the Proposed Development. As such, the ExA considers 2011 EN-1 to be important and relevant to the decision of the SoS. This is also the position of the Applicant as confirmed in paragraph 1.1.9 of its Planning Statement [[APP-203](#)].

National Policy Statement for Renewable Energy (EN-3)

- 2.4.10. The 2011 EN-3 sets out further policies specifically in relation to renewable energy. Paragraph 1.8.1 states that 2011 EN-3 covers energy from biomass and/or waste, offshore wind and onshore wind above relevant thresholds. Paragraph 1.8.2 goes on to state:

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

- 2.4.11. Paragraph 3.2.2 of the Applicant's Planning Statement [[APP-203](#)] acknowledges this position and explains that solar photovoltaic (PV) development is now technologically and economically viable at scale. At paragraph 1.1.9 of the Planning Statement, the Applicant states that 2011 EN-3 is considered to be important and relevant to the SoS's decision.
- 2.4.12. Nevertheless, it is noted from paragraph 6.3.7 of the Applicant's Planning Statement that only aspects of 2011 EN-3 are of relevance, including on renewables and good design. The subsequent analysis of policy accordance provided at Appendix 3 of the Planning Statement and the final version of this appendix at Deadline 10 [[REP10-011](#)] only specifically address Part 2.4 of 2011 EN-3 regarding good design.
- 2.4.13. Furthermore, the conclusion that 2011 EN-3 is important and relevant is at odds with the approach taken in the consideration of other solar NSIPs, namely Longfield Solar Farm, Cleve Hill Solar Park and the Little Crow Solar Park. Indeed, the NPS itself is clear that it does not apply to solar NSIPs. Accordingly, the ExA does not consider the 2011 EN-3 to be important and relevant to the determination of the application.

National Policy Statement for Electricity Networks (EN-5)

- 2.4.14. The 2011 EN-5 sets out policy in relation to long-distance transmission systems (400kV and 275kV lines), distribution systems (lower voltage lines from 132kV to 230kV from transmission substations to end users) and associated infrastructure such as substations.
- 2.4.15. The Proposed Development includes a new substation (Work No. 2), works to lay high voltage cables (400kV) to connect Work No. 2 to the existing Ryhall substation (Work No. 3A) as well as works to lay electrical cables connecting the PV arrays and related infrastructure to the new substation (Work No. 4).

- 2.4.16. The Applicant's Planning Statement [[APP-203](#)] considers 2011 EN-5 to be important and relevant, albeit, its relevance is limited to the grid connection. Appendix 3 of the Planning Statement [[REP10-011](#)] goes on to address specific policy requirements of 2011 EN-5. The ExA also considers elements of 2011 EN-5 as discussed in this report to be important and relevant to the decision of the SoS. For the avoidance of doubt, the grid connection for the Proposed Development is not considered to be an NSIP in its own right and so s104 of the PA2008 is not engaged.

Draft National Policy Statements

Background and scope

- 2.4.17. As outlined above, a revised draft suite of NPSs for energy was published for consultation by the Department of Energy Security and Net Zero (DESNZ) in March 2023. The revised drafts include EN-1, EN-3 and EN-5. Unlike the 2011 EN-1 and 2011 EN-3, the draft NPSs both include solar within their scope.
- 2.4.18. Paragraphs 3.3.57 and 3.3.58 of the 2023 draft EN-1 identify the types of infrastructure for which the need is established by the NPS and is urgent. This includes solar PV above the threshold set out in the PA2008. Policies relating to assessment principles and generic impacts are included within it.
- 2.4.19. Section 3.10 of 2023 draft EN-3 provides policies specifically for solar PV, including matters relating to expectations for the Applicant's assessment, mitigations and matters relevant to the decision making of the SoS. In recognition of the extent to which the technology has evolved since 2011, the 2023 draft EN-3 explicitly acknowledges that solar farms are now one of the most established renewables technologies in the UK and the cheapest form of electricity generation. Paragraph 3.10.2 states:
- "Solar also has an important role in delivering the government's goals for greater energy independence and the British Energy Security Strategy states that government expects a five-fold increase in solar deployment by 2035 (up to 70GW). It sets out that government is supportive of solar that is co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use."*
- 2.4.20. The 2023 draft EN-5 provides updated policies regarding electricity networks infrastructure. As with the designated EN-5, its relevance to the Proposed Development relates to the grid connection.

Transitional provisions

- 2.4.21. Section 1.6 of the 2023 draft EN-1 details the transitional provisions for the revised draft energy NPSs. They are also carried forward in to the 2024 designated EN-1. Section 1.6 states that:

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

The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each development consent order application.”

Consideration during the Examination

- 2.4.22. The Applicant’s Planning Statement [[APP-208](#)] provides a commentary on the previous draft NPSs as published in 2021 and concludes that they are likely to be important and relevant. Following their publication in March 2023, the Applicant submitted an addendum to its Planning Statement to take account of the revised draft NPSs, including the implications of the transitional provisions [[REP2-040](#)].
- 2.4.23. The Applicant’s view, as set out in paragraph 1.9 of the addendum is that the updated 2023 draft NPSs are important and relevant and should be given significant weight particularly given that there are no current solar-specific policies in the 2011 designated EN-1 and EN-3 as well as the consistency of the updated drafts with the direction of travel of Government policy. This position was echoed by the Applicant at Issue Specific Hearing 1 (ISH1) [[REP4-022](#)].
- 2.4.24. At ISH1, Rutland County Council (RCC) agreed that significant weight should be given to the 2023 draft NPSs [[REP4-045](#)]. Lincolnshire County Council (LCC) considered that the 2011 designated and 2023 draft NPSs should be given primacy over local policies [[REP4-044](#)].
- 2.4.25. The ExA considers the 2023 draft EN-1, EN-3 and EN-5 to be important and relevant on the basis that:
- They reflect wider current national policies including the British Energy Security Strategy;
 - They have been subject to public consultation;
 - 2023 draft EN-1 and EN-3 acknowledge the role that solar has to play in meeting energy needs and provide specific and detailed policies for the consideration on NSIP scale solar PV projects;
 - They were the versions before parties during the Examination.

2.5. OTHER RELEVANT NATIONAL POLICIES

- 2.5.1. Other relevant national policies have been considered by the ExA. They include:
- National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG)
 - Noise Policy Statement for England (2010)
 - Written Ministerial Statement by former Secretary of State for Housing, Communities and Local Government (25 March 2015)

- Environmental Improvement Plan (2023)
- Energy White Paper: Powering our Net Zero Future (2020)
- National Infrastructure Strategy (2020)
- Net Zero Strategy: Build Back Greener (2021)
- British Energy Security Strategy (2022)
- Powering Up Britain (2023)

2.5.2. A revised NPPF was published during the Examination in September 2023 and subsequently, following the close of the Examination, a further version was published in December 2023. The NPPF does not contain specific policies for NSIPs but is capable of being an important and relevant consideration. We have noted any relevant provisions in our consideration of the planning issues in Chapters 3 and 5, based on the September 2023 version that was before the parties at the end of the Examination. We go onto consider any implications for the SoS to consider based on the subsequent December 2023 version in Chapter 8.

2.6. THE DEVELOPMENT PLAN

2.6.1. Development plan policies that may be considered important and relevant are identified by RCC, LCC and South Kesteven District Council (SKDC) in their respective LIRs [[REP2-048](#), [REP2-044](#) and [REP2-051](#)]. The final Statements of Common Ground (SoCG) between the Applicant, RCC, LCC and SKDC confirm policies that have agreed as being important and relevant by the Applicant and respective local authority [[REP9-022](#), [REP9-020](#) and [REP9021](#)]. The ExA concurs that these policies are important and relevant to the consideration of the Proposed Development. The policies are contained within the following development plan documents:

- Rutland Local Development Framework Core Strategy (2011)
- Rutland Local Plan Site Allocations Development Plan Document (2014)
- Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies (2016)
- Rutland Minerals Core Strategy and Development Policies Development Plan Document (2010)
- South Kesteven Local Plan and Renewable Energy Appendix (2020)
- Carlby Neighbourhood Plan (2019)

2.6.2. Table A2 in Appendix A of this report lists the identified policies from the development plans.

2.6.3. Appendix 3 of the Applicant's Planning Statement [[APP-203](#)] details how local policies have been considered. A final version of Appendix 3 at Deadline 10 reflects updates made during the Examination [[REP10-011](#)].

2.6.4. RCC is currently in the process of preparing a new Local Plan for Rutland. However, this is currently at a fairly early stage of the process with submission to the Secretary of State for Levelling Up, Housing and Communities for Independent Examination not expected until January 2025. It therefore carries little weight and we do not consider it to be an

important and relevant consideration in the determination of the Application.

- 2.6.5. Chapter 3 of this report discusses the implications of local policies for the Proposed Development.

2.7. LOCAL IMPACT REPORTS

- 2.7.1. Three LIRs were submitted into the Examination at Deadline 2 by RCC [[REP2-048](#)], LCC [[REP2-044](#)] and SKDC [[REP2-051](#)] respectively that identify both positive and negative impacts arising from the Proposed Development.

- 2.7.2. The issues raised are considered in the context of s105 of the PA2008 in relation to specific planning issues in Chapter 3 of this report.

2.8. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.8.1. The Proposed Development falls within Schedule 2 Part 3 (a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) as an industrial installation for the production of electricity.

- 2.8.2. Due to the nature, size and location of the Proposed Development, it has the potential to have significant effects on the environment and therefore is considered EIA development. Accordingly, the Applicant provided an Environmental Statement (ES) in line with 8 (1)(b) of the EIA Regulations. Appendix B of our report lists the ES documents.

- 2.8.3. A Scoping Report was submitted to the SoS in accordance with Regulation 10 (1) of the EIA Regulations on 7 February 2022 [[APP-049](#)]. On 18 March 2022, a Scoping Opinion was duly provided by the SoS [[APP-050](#)].

- 2.8.4. A Non-Technical Summary of the ES has been provided by the Applicant [[APP-106](#)]. An updated Summary of Effects and Mitigation was submitted by the Applicant at Deadline 2 [[REP2-010](#)].

- 2.8.5. At the outset of the Examination, the Applicant did not seek a time limited consent and the ES was prepared on this basis. To provide worst case scenarios, the ES generally assesses the permanent effects of the operational phase. However, Chapter 13 (Climate Change) [[APP-043](#)] and Appendix 11.5 of the ES (Flood Risk Assessment) [[APP-086](#)] assumed a 40-year operational period.

- 2.8.6. At Deadline 5, the Applicant proposed a 60-year time limit to the operational phase and provided an initial assessment of the implications of this change for the ES [[REP5-012](#)]. Following discussion at ISH4 [[REP7-036](#)] and a request from the ExA, the Applicant submitted a Statement on the 60-Year Time Limit [[REP7-038](#)] to provide further consideration of each topic assessed in the ES.

- 2.8.7. RCC and SKDC commissioned an independent compliance review by Stantec [[REP3-039](#)] of the Applicant's ES. This review concluded that the EIA is in compliance with applicable EIA legislation and associated guidance and that it comprehensively identifies and assesses the likely significant effects of the Proposed Development. The review also concludes that the ES provides sufficient information to allow an informed decision to be made. The limitations set out in paragraph 1.4 of the review are noted, including that it is desk based and not involved a site visit, and that it is not its purpose to provide an in-depth technical check of the individual specialist discipline areas.
- 2.8.8. We are satisfied that the ES provides a suitable basis for the consideration of the Proposed Development. Matters relating to the ES are considered and discussed in more detail later in our report.

2.9. HABITATS REGULATIONS ASSESSMENT

- 2.9.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.9.2. The Applicant provided a shadow Habitat Regulations Assessment (sHRA) [[APP-063](#)] and a subsequent update at Deadline 5 [[REP5-054](#)] that both concluded that there would be no likely significant effect arising from the Proposed Development on any European site. This is considered further in Chapter 4 of this report.

2.10. WATER ENVIRONMENT (WATER FRAMEWORK DIRECTIVE) (ENGLAND AND WALES) REGULATIONS 2017

- 2.10.1. The WFD Regulations give effect to the Water Framework Directive which establishes a framework for water policy and water quality. They seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems. Chapter 11 of the ES includes a WFD assessment [[APP-041](#)]. This is considered further in Section 3.11 of this report.

2.11. TRANSBOUNDARY EFFECTS

- 2.11.1. Transboundary screening was undertaken in accordance with Regulation 32 of the EIA Regulations on 31 May 2022 [[OD-001](#)] on the basis of the Scoping Report. The Planning Inspectorate concluded that the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State (EEA). It was also considered that the likelihood of transboundary effects is so low that detailed transboundary screening was not required but that this position would be kept under review.
- 2.11.2. On 26 January 2023, the transboundary effects were subject to re-screening taking account of the ES and sHRA [[APP-063](#)]. The same conclusion was reached.

- 2.11.3. Noting the fact that the duty under Regulation 32 of the EIA Regulations continues throughout the application process, the ExA considers that no issues have arisen during the Examination that would indicate that the Proposed Development would have a significant effect on the environment of an EEA State.

3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

3.1. INTRODUCTION

- 3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured to firstly examine the matters of principle, including need, site selection and alternatives, followed by generic topic headings which are arranged in alphabetical order. The order in which all these section headings are presented should not be taken to imply any order of merit.
- 3.1.2. The sections of this chapter generally follow a common structure:
- *Introduction* - detailing what issues will be considered in each section;
 - *Policy background* - which identifies the main policy against which the issue has been examined;
 - *Applicant's approach* - which summarises the main features of the approach that the Applicant has undertaken, as described in the application documents;
 - *Issues arising during the examination* - which identifies matters that arose in the course of the Examination and our reasoning in respect of these issues;
 - *Conclusions* - which sets out our findings and conclusions on each issue and whether any effects carry little weight, moderate weight, substantial weight, very substantial weight for/against or neutral weight for the making of the Development Consent Order (DCO). These conclusions are carried forward to Chapter 5.

Initial Assessment of Principal Issues (IAPI)

- 3.1.3. As required by section 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, in advance of the Preliminary Meeting (PM) the ExA made an IAPI arising from the Application. This can be found in Annex C of our Rule 6 letter [[PD-006](#)]. This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was raised and discussed at the PM. For the avoidance of doubt, the IAPI was drafted with the question of need being captured under 'Consideration of the benefits of the proposal' within Item 5 of the IAPI 'General matters'.
- 3.1.4. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral

questioning during the Examination. Our report has nevertheless had regard to all submissions from Interested Parties and has reported on those, where appropriate, within each topic below. Matters are generally only reported upon if we consider them to be important and relevant to the decision and they have not been agreed or adequately justified or are controversial.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

Introduction

- 3.2.1. Matters relating to the need for the Proposed Development, its overall scale, output and scope as well as the approach taken to site selection and alternatives are discussed in this section. This includes the operational time period of the Proposed Development and matters relating to the use of agricultural land insofar as they relate to site selection and alternatives. Landscape and visual matters are considered in Section 3.6. Agricultural land use and soil matters are considered further in Section 3.7 of this report. The sequential approach to flood risk is considered separately in Section 3.11.
- 3.2.2. The approach to site selection and alternatives and the effects of the size and scale of the proposed development were identified amongst the principal issues in our IAPI [[PD-006](#)].

Policy background

National Policy Statements

Need

- 3.2.3. The 2011 EN-1 does not include solar projects within its scope as solar was not considered as a viable utility scale technology at that time. However, it notes that it is for industry to propose new energy infrastructure projects within the strategic framework set by Government, and planning policy should not set targets for, or limits on, different technologies.
- 3.2.4. 2011 EN-1 recognises the need for the UK to transition to a low carbon economy and to improve the security, availability and affordability of energy through diversification. This reflected the legally binding target to cut greenhouse gas emissions by at least 80% by 2050 compared to 1990 levels as set out in the Climate Change Act 2008.
- 3.2.5. The importance of a grid connection is cited as an important consideration in section 4.9. It says that applicants will liaise with National Grid or regional Distribution Network Operator to secure a connection although a connection agreement may not have been reached by the time of application. The decision maker should be satisfied that there is no obvious reason why a grid connection would not be possible.
- 3.2.6. The 2023 draft EN-1 reflects legislative and technological changes since 2011. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 legislates for net zero greenhouse gas emissions by 2050. In the

shorter term, the Government's sixth carbon budget requires the UK to reduce greenhouse gas emissions by 78 per cent by 2035 compared to 1990 levels. It also draws upon the Energy White Paper (December 2020), the Net Zero Strategy: Build Back Greener (October 2021), the British Energy Security Strategy (April 2022) and the Growth Plan (September 2023) that sets out proposals for transitioning to a net zero economy and which highlight the role of renewable energy generation in achieving this.

- 3.2.7. Paragraph 3.3.20 explicitly recognises the role of solar (alongside wind) as the lowest cost method of generating electricity and providing a clean and secure supply. It states that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar. Paragraphs 3.3.57 and 3.3.58 identify solar PV as a type of infrastructure for which the need is established by the NPS (when designated) and that the need is urgent.
- 3.2.8. Given the need and urgency for infrastructure types covered by 2023 draft NPS EN-1, paragraph 4.1.3 states that the SoS will start with a presumption in favour of granting consent unless any further NPS policies indicate otherwise.
- 3.2.9. The 2023 draft EN-3 provides specific policies in relation to solar PV projects greater than 50 MW in England. It reflects the need for solar proposed to be established in 2023 draft EN-1 and highlights the Government's goal of achieving a five-fold increase in solar deployment by 2035 (up to 70GW) as expressed in the British Energy Security Strategy.

Scale, output and scope

- 3.2.10. Paragraph 3.2.3 of 2011 EN-1 explains that "*without significant amounts of new large-scale energy infrastructure, the objectives of its energy and climate change policy cannot be fulfilled*" and that "*it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts*". The 2023 draft EN-1 echoes this position. Such impacts are considered later in this report.
- 3.2.11. In terms of scale, 2023 draft EN-3 states that along with associated infrastructure:
- "...a solar farm requires between 2 to 4 acres for each MW of output. A typical 50MW solar farm will consist of around 100,000 to 150,000 panels and cover between 125 to 200 acres".*
- 3.2.12. However, paragraph 3.10.8 goes on to acknowledge that this range may vary significantly depending on the site. In line with 2011 EN-1, it also states that "*this scale of development will inevitably have impacts, particularly if sited in rural areas*".
- 3.2.13. The 2023 draft EN-3 also states that from the date of designation of the NPS, the maximum combined capacity of installed inverters measured in alternating current (AC) should be used for determining the capacity of a

solar site. The capacity of solar projects can be measured in terms of direct current (DC) or AC. However, all other forms of generation are measured in AC and so this policy is proposed to ensure that solar schemes are considered in a consistent manner.

- 3.2.14. Paragraph 3.10.46 of 2023 draft EN-3 describes how applicants may account for the degradation of solar panels that may occur over time by overplanting solar panel arrays. Footnote 84 goes on to explain that overplanting refers to *"the situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection....solar generators may install but not initially use additional panels to act as a back-up for when panels degrade, thereby enabling the grid connection to be maximised across the lifetime of the site. For planning purposes, the proposed development will be assessed on the impacts of the overplanted site"*.
- 3.2.15. In relation to energy storage, 2011 EN-1 identifies the benefit of decoupling energy production from supply in meeting peak demand. However, pumped storage is the only identified utility scale infrastructure identified. The 2023 draft EN-1 and EN-3 update this position with the latter stating that solar may be co-located with storage or other functions to maximise the efficiency of land use.
- 3.2.16. Paragraph 3.10.56 of the 2023 draft EN-3 states that an upper limit of 40-years is typical for the operational period of a solar farm although applicants may seek consent without a time period or for differing periods of operation.
- 3.2.17. Paragraph 2.3.5 of 2011 EN-5 states that the decision maker should consider that National Grid as well as Distribution Network Operators are required under Section 9 of the Electricity Act 1989 to bring forward proposals in terms of network design taking in to account current and reasonably anticipated future network demand. National Grid also has a statutory duty to provide a connection. The 2023 draft EN-5 makes similar provisions.

Site selection and alternatives

- 3.2.18. 2011 EN-1 confirms that, from a policy perspective, there is no general requirement to consider alternatives or establish whether the project represents the best option. Applicants are however required to set out details in their ES details of the main alternatives considered, including the main reasons for the applicant's choice, environmental, social and economic effects and, where relevant, feasibility.
- 3.2.19. In some circumstances, legislative requirements may also necessitate the consideration of alternatives, for example, under the Habitats Directive. The relevant energy NPSs may also impose policy requirements to consider alternatives as 2011 EN-1 does in sections 5.3, 5.7 and 5.9 in relation to biodiversity, flood risk and the historic environment respectively. The 2023 draft EN-1 carries forward these requirements.

- 3.2.20. In addition, paragraph 4.4.3 of 2011 EN-1 states that where there is no legal or policy requirement, alternatives should be considered by the decision maker in the context of the urgent need for energy infrastructure and guided by the stated principles when deciding what weight to give to alternatives. These include the need to consider alternatives in a proportionate manner and whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development.
- 3.2.21. A similar approach to alternatives is taken forward into the 2023 draft EN-1 with the addition that the SoS must consider duties under the Environment Act 2021 in relation to environmental targets and have regard to policies in the Government's Environmental Improvement Plan.
- 3.2.22. Paragraph 4.9.1 of 2011 EN-1 states that connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend generation plant. In the market system, it is for the applicant to ensure that there will be the necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated.
- 3.2.23. 2011 EN-1 requires applicants to safeguard any mineral resources on the proposed site as far as possible taking account of the long-term potential use of the land after decommissioning. Impacts upon a Mineral Safeguarding Area (MSA) should be mitigated. 2023 draft EN-1 contains similar requirements.
- 3.2.24. In relation to site selection, the 2023 draft EN-3 outlines factors and associated policies that are likely to influence the site selection process as well as design:
- Irradiance and site topography
 - Proximity of a site to dwellings
 - Agricultural land classification and land type
 - Accessibility
 - Public rights of way
 - Security and lighting
 - Network connection
- 3.2.25. Paragraph 3.10.14 of 2023 draft EN-3 states that:
- "While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land (avoiding the use of "Best and Most Versatile" agricultural land where possible)."*
- 3.2.26. Paragraph 3.10.15 states that whilst the development of solar PV arrays is not prohibited on agricultural land classified grade 1, 2 or 3a, the

impacts of such are expected to be considered. Paragraph 3.10.16 goes onto recognise that at this scale, it is likely that developments may use some agricultural land and that applicants should explain their choice of site, noting the preference for development to be on brownfield and non-agricultural land.

- 3.2.27. Paragraph 3.10.17 requires that consideration should also be given to whether the proposal allows for the continuation of agricultural use and/or can be co-located with other functions such as storage to maximise the efficiency of land use.

National Planning Policy Framework

- 3.2.28. The NPPF identifies the need for the planning system to take proactive approach to mitigating and adapting to climate change, taking account of long-term implications for matters, including; flood risk, biodiversity and landscapes.
- 3.2.29. The NPPF is clear that in determining planning applications for renewables, local planning authorities should not require applicants to demonstrate the overall need. Furthermore, it directs local planning authorities to approve such applications if the impacts are (or can be made) acceptable.
- 3.2.30. The Planning Practice Guidance (PPG) recognises that increasing renewable energy will help to make sure the UK has a secure energy supply, reduce greenhouse gases, slow down climate change as well as stimulate investment in jobs and businesses. It also identifies planning considerations that relate to large scale ground-mounted solar PV farms and links to the Written Ministerial Statement on solar energy from 2015.
- 3.2.31. Whilst the latest NPPF as published in December 2023 was not available during the Examination, we note that footnote 62 now states that the availability of agricultural land for food production should be considered when deciding which sites are appropriate for development in the context of plan making.

Written Ministerial Statement 2015

- 3.2.32. A Written Ministerial Statement of the former SoS for Communities and Local Government dated 25 March 2015 (WMS) recognises solar as an important part of the UK's energy mix. It reiterates policy regarding the use of agricultural land from the NPPF and goes on to state that "*any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence*". However, it also states that every application needs to be considered on its individual merits.

Development plan

- 3.2.33. Several policies specified in the development plan are also of relevance to the principle of the Proposed Development.

- 3.2.34. Policy SD1 (The Principles of Sustainable Development) of the South Kesteven Local Plan (SKLP) sets out overarching criteria for a range of issues, including; minimising the effects of climate change and encouraging the use of previously developed land.
- 3.2.35. SKLP Policy RE1 (Renewable Energy Generation) supports proposals for renewable energy generation subject to them meeting the criteria set out in the Renewable Energy Appendix to the Local Plan and provided that:
- a. *The proposal does not negatively impact the District's agricultural land asset;*
 - b. *The proposal can demonstrate the support of affected local communities;*
 - c. *The proposal includes details for the transmission of power produced;*
 - d. *The proposal details that all apparatus related to renewable energy production will be removed from the site when power production ceases; and*
 - e. *That the proposal complies with any other relevant Local Plan policies and national planning policy.*
- 3.2.36. SKLP Policy SP1 (Spatial Strategy) outlines the overall spatial development strategy. It specifies that development affecting best and most versatile agricultural land will only be permitted if:
- *"There is insufficient lower grade land available at that settlement (unless development of such lower grade land would be inconsistent with other sustainability considerations); and*
 - *Where feasible, once any development which is permitted has ceased its useful life, the land will be restored to its former use and will be of at least equal quality to that which existed prior to the development taking place (this requirement will be secured by planning condition where appropriate)."*
- 3.2.37. Criterion 9 of the Renewable Energy Appendix that supports the Local SKLP Plan details a sequential approach that should be undertaken for renewable energy proposals on agricultural land:
- First, be required to carry out an extensive search for derelict or brownfield sites. This test should not necessarily be confined to the District, in line with the Wherstead appeal decision;
 - Second, be required to carry out a search for poorer agricultural sites i.e., Grade 4 and 5. This test should also not necessarily be confined to the District;
 - Third, be required to provide the MAFF agricultural grade classification for the proposed site; and
 - Fourth, be required to prove why the site has to be located close to a particular power grid line and that there is spare capacity on that grid line.
- 3.2.38. SKLP Policy SP5 (Development in the Open Countryside) seeks to limit development in the open countryside to that which has an essential need to be located outside of a settlement. A series of exceptions whereby

development is acceptable in principle are also listed including rural diversification projects.

- 3.2.39. Rutland Core Strategy (RCS) Policy CS1 (Sustainable Development Principles) outlines key principles for development, including; the need to minimise the impact on climate change, measures to take account of future changes to the climate and making use of previously developed land before greenfield land.
- 3.2.40. RCS Policy CS2 (Spatial Strategy) requires the consideration of the impact of development in both scale and design to reflect local character and to be consistent with maintaining and enhancing the local environment.
- 3.2.41. RCS Policy CS4 (Location of Development) seeks to ensure that development outside of settlement boundaries is restricted to types that require a countryside location.
- 3.2.42. RCS Policy CS20 (Energy Efficiency and Low Carbon Energy Generation) supports low carbon energy generating developments where the environmental, economic and social impacts can be satisfactorily addressed. A range of specific issues to be addressed is also identified relating to impacts as well as "*the contribution to national and international environmental objectives on climate change and national renewable energy targets.*"
- 3.2.43. The Rutland Site Allocations and Policies Development Plan Document (RSPDPD) Policy SP18 (Wind Turbines and Low Carbon Energy Developments) supports low carbon energy proposals that accord with RCS Policy CS20. Proposals must also be acceptable in terms of a list of considerations relating to environmental and social effects as well as grid connection and proximity of the generating plant to the renewable energy source.
- 3.2.44. The Rutland Minerals Core Strategy and Development Policies Development Plan Document contains Policy 10 (Development in Minerals Safeguarding Areas). It states the planning permission will not be granted for incompatible development within the MSA unless certain tests are met. These include whether the applicant can demonstrate that the incompatible development is of a temporary nature and can be completed and the site restored to a condition that does not inhibit extraction within the timescale that the mineral is likely to be needed or if there is an overriding need for the development.
- 3.2.45. Policy M11 (Safeguarding of Mineral Resources) of the Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies Document contains similar provisions to prevent the sterilisation on minerals. Part of the Order limits lie within a Lincolnshire MSA.

Applicant's approach

Need

- 3.2.46. The Applicant's Statement of Need [[APP-202](#)] sets out its position on the need for the Proposed Development. It considers the legislative and policy requirements relating to net zero, the extent to which decarbonisation has been achieved in the UK to date, the likely future demand for electricity and the role that solar has to play. The case for need is cited as being built upon on the contribution of the Proposed Development to national policy aims for decarbonisation, security of supply and affordability.
- 3.2.47. The urgent need for energy generating stations set out in 2011 EN-1 and 2023 drafts EN-1 and EN-3 is cited by the Applicant as a reason for significant weight being attributed to the need for the Proposed Development. The Applicant's Planning Statement [[APP-203](#)] also calls for substantial weight to be given to the revised draft suite of energy NPSs.
- 3.2.48. In conclusion on the need for the Proposed Development, paragraph 12.1.6 of the Applicant's Statement of Need says that:

"In Summary: the meaningful and timely contributions offered by the Proposed Development to UK decarbonisation and security of supply, while helping lower bills for consumers throughout its operational life, will be critical on the path to Net Zero. Without the Proposed Development, a significant and vital opportunity to develop a large-scale low-carbon generation scheme will have been passed over, increasing materially the risk that future Carbon Budgets and Net Zero 2050 will not be achieved."

Scale, output and scope

- 3.2.49. The Order limits comprise of around 852ha of land in total. The maximum total area to be occupied by the PV arrays (Works No 1) is approximately 420ha as set out in the Project Description [[REP2-012](#)]. The number of PV modules is to be determined and would be dependent on the chosen technology at the time of construction. However, for the purposes of the ES, the Project Description confirms that it was assumed that 530,303 panels would be required to deliver 350MW of installed DC capacity. The Planning Statement [[APP-203](#)] states that this would provide enough electricity to power an equivalent of 92,000 homes annually. This figure is based on data, including an estimated solar load factor of 11.4%.
- 3.2.50. A Grid Connection Statement [[APP-205](#)] confirms that the Applicant has a grid connection agreement with National Grid Electricity System Operator Limited to export 240MW (AC) to the national grid. The development would be connected to the National Electricity Transmission System (NETS) via a Point of Connection at the existing Ryhall 400kV substation. A new single substation (400/33KV) (Works No 2) is included in the Proposed Development to facilitate the export of electricity to the grid via the existing Ryhall substation.

- 3.2.51. In response to a request for further information from the ExA, National Grid Electricity Transmission Plc (NGET) confirmed [REP8-028] that no impediments to the connection had been identified to date and that the Front End Engineering Design work was ongoing with an outcome expected in summer 2024. NGET also explained that it expected to use its permitted development rights to undertake the necessary works at the Ryhall substation.
- 3.2.52. Section 11.5 of the Applicant’s Statement of Need [APP-202] explains that the Proposed Development does not include battery storage due to import limitations at the Ryhall substation [APP-205]. Section 7.7 and paragraph 11.5.1 of the document confirms that overplanting is proposed as part of the Proposed Development to maximise the use of the grid connection during its operational life. As discussed later in this section of the report, it was later estimated by the Applicant that 132ha of the 420ha PV array area (Works No 1) would be occupied by overplanting.
- 3.2.53. In relation to the scale of the Proposed Development, the Applicant summarises in its Closing Summary Statement [REP10-013] that a landscape led approach as set out in its Design and Access Statement [REP5-058] identified key design considerations that were fundamental to the scale of the Order limits and PV arrays. The Early Site Environmental Red Flag Review [Appendix F of REP2-038] also informed this process in the early stages of project development.
- 3.2.54. The Applicant states it has sought to maximise energy generation whilst minimising impacts as far as possible. The design process has also sought to retain flexibility within the Project Parameters [REP7-013] for the use of Single Axis Trackers and Fixed South Facing arrays which have different land takes.
- 3.2.55. The application as submitted did not include a time limit to the operational phase of the development. However, Requirement 18 (decommissioning and restoration) of the original draft DCO [APP-020] made provisions for decommissioning to take place at a time to be determined by the Applicant. At Deadline 5 [Q1.02 to Q1.04 of REP5-012], the Applicant proposed a 60-year operational time limit through Requirement 18 of the draft DCO [REP9-005]. At Deadline 7, the Applicant submitted a Statement on 60-Year Time Limit [REP7-038] to set out the implications of the time frame for the ES.

Site selection and alternatives

- 3.2.56. Chapter 4 of the ES (Alternatives and Design Development) [APP-034] outlines the approach to alternatives in relation to sites, technologies and layouts. The Applicant explains that “no development” is not considered as a reasonable alternative on the basis that it would not deliver renewable energy as required to meet the UK’s net zero targets.
- 3.2.57. No alternative grid connection routes are considered given the close proximity between the proposed onsite substation and the existing National Grid Ryhall substation. Figure 5.8 of the ES [APP-128] identifies the options initially considered in the Application for alternative means of

crossing the East Coast Main Line which bisects the Order limits. We consider this in Chapter 6 – Compulsory Acquisition and Related Matters.

- 3.2.58. Appendix 1 (Site Selection Assessment) of the Applicant’s Planning Statement [[APP-203](#)] provides further details of the site selection process undertaken by the Applicant.
- 3.2.59. Appendix 4 of the Planning Statement provides a Minerals Assessment. It identifies MSAs within the Order limits within Rutland and Lincolnshire and concludes that the resource would not be permanently sterilised. Furthermore, it considers that there is an overriding need for the development that cannot reasonably be sited elsewhere.
- 3.2.60. At the outset, Chapter 4 of the ES and the Site Selection Assessment reiterates the policy context that there is no general requirement to consider alternatives or to establish that the development represents the best option. However, the Site Selection Assessment goes on to recognise that there are policy preferences in relation to the use of lower grade agricultural land as well as previously developed land in relation to this process.
- 3.2.61. Section 2 of the Site Selection Assessment also puts forward the Applicant’s position on compliance with 2011 EN-1 and 2023 draft EN-1 in relation to alternatives regarding biodiversity, flood risk and the historic environment.
- 3.2.62. No adverse effects on the integrity of a protected European site are identified by the Applicant and so the requirements for the consideration of alternatives under the Habitats Directive are not deemed to have been triggered. Tests relating to the Water Framework Directive are not considered to be engaged.
- 3.2.63. Section 3 of the Site Selection Assessment explains that the emphasis on the process of locating a site was on delivering energy at scale and making use of existing capacity at a grid connection.
- 3.2.64. Lincolnshire is identified by the Applicant as a good broad location to locate a solar farm for a variety of reasons, including; the level of irradiance, topography, available grid connections, a sparse settlement pattern and the relative lack of Grade 1 agricultural land. No comment is offered in relation to the suitability of the county of Rutland. Site selection criteria developed by the Applicant are intended to reflect key factors identified in 2023 draft EN-3.
- 3.2.65. Paragraph 4.3.1 of the ES [[APP-034](#)] summarises the key reasons for selecting the site. These include the proximity to the Ryhall National Grid substation which has available capacity and there are higher levels of irradiance in the region. Furthermore, the land is not within the Green Belt or designated landscape, it is predominantly within Flood Zone 1, it is within close proximity to the A1 which provides good accessibility and the Proposed Development “*avoids the use of large areas of best and most versatile (BMV) agricultural land*”. The ES also cites limited, conflict with development plan allocations, displacement of business and a

limited number of residential properties in the immediate vicinity of the Order limits.

- 3.2.66. The availability of willing landowners and a relative lack of previously developed sites within a sufficient distance of the Ryhall substation are also cited as factors. Previously developed land registers held by SKDC and RCC identified 22ha and 3.4ha of such land respectively.
- 3.2.67. Larger sites, either fully or partially previously developed, at Woolfox Depot (486ha), North Luffenham (300ha) and Cottesmore (115ha) are briefly considered by the Applicant. All are further away from the Ryhall substation than the Order limits and are discounted by the Applicant for a variety of reasons, including availability.
- 3.2.68. Alternative renewable technologies were not considered by the Applicant as a solar farm company. Nevertheless, the Applicant provides a brief explanation as to why other renewables such as onshore wind would be unsuitable.
- 3.2.69. With regards to the configuration of the PV arrays, an east/west arrangement is discounted in comparison to fixed south facing and single access tracking as discussed in Chapter 4 of the ES [[APP-034](#)] and reflected in the Project Parameters [[REP7-013](#)]. An east/west configuration is considered to reduce opportunities for Biodiversity Net Gain (BNG) as well as grazing due to an increase in density and the subsequent level of light reaching the ground.
- 3.2.70. Paragraph 4.3.14 of the ES explains that the layout of the Proposed Development has evolved iteratively during the EIA and consultation process to take account of feedback and environmental effects. The design evolution is summarised in Table 4-1 of Chapter 4 of the ES [[APP-034](#)]. Changes made to the proposals prior to the submission of the application include a reduction in the size of the Order limits (from 880ha to 852ha) and solar PV area (from 570ha to 425ha) as well as removing fields that were identified as being entirely Grade 2 agricultural land.

Issues arising during the Examination

Local Impact Reports

- 3.2.71. Local Impact Reports (LIRs) prepared by RCC, LCC and SKDC [[REP2-048](#), [REP2-044](#), [REP2-051](#)] all recognise the positive impacts of the Proposed Development related to the production of renewable energy and the contribution that this would have towards achieving net zero.
- 3.2.72. In terms of site selection, RCC's LIR recognises the proximity of the grid connection point to be a positive and a main reason for the siting of the project. Nevertheless, concerns are raised in relation to the uncertainty regarding the cable routing across the East Coast Mainline railway.
- 3.2.73. Due to the temporary nature of the project, the LIR does not consider that it would sterilise mineral resources. Neutral impacts are identified in relation to the Applicant's consideration of alternative sites. However, the

scale of the Proposed Development is identified as a concern by RCC in terms of impacts on agricultural production as well as the character of the area and local communities.

3.2.74. LCC's LIR also raised concerns regarding the overall scale of the Proposed Development and related loss of agricultural land, including Best and Most Versatile (BMV) land. It also identifies that part of the Order limits lie within a Mineral Safeguarding Area (MSA). The LIR states that LCC disagree with the Applicant's position as detailed in its Minerals Assessment that the Proposed Development could not be reasonably sited elsewhere on the basis that the Order limits could have been reduced in size to avoid the MSA. However, LCC conclude that there would be a neutral impact on minerals and concur with the Applicant that the Proposed Development would not permanently sterilise the mineral resource.

3.2.75. SKDC's LIR is broadly consistent with the others in identifying significant concerns regarding the scale of the project with associated impacts on character, communities as well as agricultural land and production.

Need

3.2.76. IPs were in broad agreement regarding the need to deliver renewable energy in support of achieving net zero. In response to the ExA's First Written Questions (ExQ1 1.2.6) [[REP2-037](#)], the Applicant explained that if the Proposed Development was not implemented, the benefits that could be achieved by the project would need to be delivered by other undefined and unconsented projects and that this would significantly increase the risk of the Government's legal net zero obligations not being met.

3.2.77. At Issue Specific Hearing 1 (ISH1) [[REP4-022](#)], the Applicant set out its position on need for the Proposed Development focussing on decarbonisation, energy security and the affordability of energy. It introduced the Committee on Climate Change (CCC) June 2023 Progress Report to Parliament [[REP4-023](#)] which identified a lack of urgency in the delivery of decarbonisation in the UK. The report stated that:

"To achieve the NDC [2030] commitments the goal of at least a 68% fall in territorial emissions from 1990 levels, the rate of emissions reduction outside the power sector must almost quadruple from what has been achieved so far".

3.2.78. The Applicant also drew attention to the statement in the same report that "Some of the key planks of the UK Net Zero Strategy have substantial lead-times" thus highlighting the need for urgency.

3.2.79. Reference was also made by the Applicant to the National Grid's Future Energy Scenarios Report published on 10 July 2023 [[REP4-024](#)]. This states that sufficient electricity connection capacity is vital to support solar capacity projections to which the Applicant suggests implies that available electricity connection capacity is not currently sufficient to

support Government's ambition and that available opportunities such as the Ryhall substation should be utilised.

- 3.2.80. The Applicant also drew attention to page 20 of the CCC Report which states that "*Given short lead-times, rapid deployment of onshore wind and solar could have helped to mitigate dependence on imported gas during the fossil fuel crisis*". Furthermore, in relation to affordability, the Applicant highlighted Figure 10.2 of the Statement of Need ([APP-202](#)) which explains that the UK electricity market mechanism means that the delivery of increasing capacities of solar generation reduces the price for consumers. This position was contested by the Mallard Pass Action Group (MPAG) who stated that gas is the determinative factor in electricity pricing [[REP4-055](#)].
- 3.2.81. At ISH1, the Applicant explained that gas is currently the last plant to be turned on and so does set the price of electricity at that point in time. However, in a scenario where a large capacity of renewable sources are generating, gas may not be turned on and so the price would be determined by this lower cost source [[REP4-022](#)]. We consider the Applicant's reasoning to be reasonable in this respect.
- 3.2.82. In the context of the legislative and policy background as well as the evidence considered during the Examination, we consider that there is a compelling case for the need for further solar electricity generation. In this respect, significant weight is given by the ExA to the 2023 draft EN-1 that now seeks to establish the urgent need for solar.
- 3.2.83. However, concerns were raised by some IPs, including MPAG, during the Examination in relation to the extent which the Proposed Development would contribute towards achieving climate change objectives and whether other means of generating renewable energy are more appropriate. We consider this below.

Output

- 3.2.84. The amount of energy to be generated by the Proposed Development and the number of homes that this would likely support over its lifetime was subject to scrutiny during the Examination, including at ISH1. In particular, MPAG challenged the Applicant's calculations in this regard and the use of the 11.4% plant load factor for output and carbon estimates for the project [Q.1.1.2 of [REP5-031](#)]. This is higher than the UK average of 10.5% (as derived from National Grid's operational data) as well as in figures applied in support of the Longfield (10.9%) and Little Crow (10.08% to 10.79%) solar farm schemes that have recently been granted Development Consent by the SoS and are located in areas where higher irradiance is expected.
- 3.2.85. The Applicant subsequently submitted satellite data to substantiate the load factor and explained that it related to a single point within the Order limits [[REP5-012](#) and [REP5-013](#)]. It also pointed to Figure 7.4 of its Statement on Need that indicates that the Order limits are located in an area with higher irradiance.

- 3.2.86. At the close of the Examination, as confirmed in its SoCG, MPAG agreed that the plant load factor for the Proposed Development is 11.4%, assuming the satellite data and calculations are correct [[REP9-023](#)].
- 3.2.87. Whilst noting the higher load factors applied across other projects, the ExA considers from the evidence that the Applicant has adequately justified the 11.4% load factor applied in this case.
- 3.2.88. Towards the end of the Examination at Deadline 8 and in response to our Rule 17 request for further information, the Applicant set out its final position on the average annual generation and likely number of households supplied over 40-years (the assumed operational timeframe for the purposes of preparing calculations at the time of application) and 60-years (the now proposed operational time limit) [[REP8-021](#)]. At Deadline 4 [[REP4-022](#)], the Applicant stated that:
- "the 40-year average annual generation from the Proposed Development is approximately 315,000MWh, which is equivalent to the annual average consumption of approximately 85,000 homes over a period of 40 years, which is of the same order of magnitude of the number of households in the Local Authority areas of South Kesteven and Rutland combined."*
- 3.2.89. Table 2 of the Applicant's Rule 17 response indicates that the average output across the 60-year time frame would be 300,777MWh per year. This would power 79,994 households on average over the 60-year period. This calculation factors in panel degradation and does not take account of any panel replacement and so is considered to be cautious by the Applicant.
- 3.2.90. Alternative estimates of output and the number of homes to be supported between years 1 and 40 and 41 to 60 are also provided that indicate that the Proposed Development could support circa 83,543 homes up to year 40 and 72,896 between years 41 and 60, accounting for degradation.
- 3.2.91. MPAG's Closing Summary Statement [[REP10-024](#)] notes that these estimates represent a reduction in the 92,000 homes originally set out by the Applicant in its Planning Statement.
- 3.2.92. However, even the most cautious of the Applicant's calculations indicate that the Proposed Development would make a sizeable contribution towards the UK's energy needs. Indeed, it would power the broad equivalent of all of the households in Rutland and South Kesteven. Accordingly, the ExA affords this substantial positive weight.

Scale

- 3.2.93. In addition to concerns raised by the host local authorities in their respective LIRs, the scale of the Proposed Development was identified as a major concern by many IPs, including MPAG. The particular effects that may relate to scale such as landscape and visual and residential amenity are considered separately later in this chapter. The principle of the scale of the Proposed Development is considered here.

- 3.2.94. MPAG's Written Representation and other submissions [[REP2-090](#)] put forward a case that the scale is unprecedented with no comparable solar farms having been constructed in the UK making an assessment of effects more difficult. It was also claimed that the scale of development led to broad assumptions being made by the Applicant with a lack of detailed consideration and surveys being undertaken.
- 3.2.95. MPAG also drew comparison with the scale of the Proposed Development against other NSIP solar projects, including Cleve Hill and Little Crow which were considered to be smaller. In addition, the land take per megawatt peak (MWp) was also considered to be higher for the Proposed Development than other NSIP scale solar projects.
- 3.2.96. At Compulsory Acquisition Hearing 1 (CAH1) Mr R Williams, noted that the megawatt per acre ratio for Longfield and Little Crow is 2.8 and 3.3 respectively, whereas the Proposed Development needs 6.2 acres per megawatt [[REP4-042](#)]. MPAG hypothesised that this could be due to the extent of constraints at Mallard Pass resulting in additional mitigation land. The extent of overplanting was also cited by MPAG as a possible cause of the extent of the PV arrays area with overplanting itself being proposed by the Applicant to compensate for the lack of a Battery Energy Storage System (BESS) [[REP5-031](#)].
- 3.2.97. The issue was considered during CAH1 and CAH2 as well as in the ExA Further Written Questions (ExQ2). The Applicant's final position on the matter is summarised in its Closing Summary Statement [[REP10-013](#)]. Key points made by the Applicant include:
- A design led approach from the early stages of the project has considered and shaped the scale of the Order limits as well as the PV array area to help minimise impacts.
 - Flexibility is sought in the design to enable the use of single axis trackers and fixed south facing panels.
 - Detailed design and layout (including the extent of PV array areas) would be subject to further consideration and approval by the local authorities as per Requirements 6 and 7 of the draft DCO.
 - The Proposed Development does not have a significantly larger land take in terms of acres per MWp (2.9) when compared with other NSIP solar projects as evidenced in Appendix A to the Applicant's summary of CAH2 submissions [[REP7-035](#)].
 - The Proposed Development is also within the range of 2 to 4 acres per MWp as set out in the 2023 draft NPS EN-3. The range specified in the NPS is considered to relate to the PV array area only rather than the Order limits as a whole.
- 3.2.98. With regards to overplanting, the Applicant explains in its Statement of Need at Section 7.7 that it is "*the situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection*" [[APP-202](#)]. The Applicant made the case that over the lifetime of the Proposed Development, there would be an increase in the number of Megawatt hours that would be exported to the grid than would otherwise be the case and that this would support

decarbonisation, security of supply and affordability aims. However, it clarified that overplanting was not considered to be a substitute for the lack of a BESS as indicated by MPAG.

- 3.2.99. In terms of land take associated with overplanting, the Applicant estimated in its post hearing note following ISH1 [[REP4-022](#)] that 132ha of the 420ha PV array area (Works No 1) would be occupied by such panels or approximately 166,666 PV modules out of the 530,303 assumed to be installed in the ES. This is based on an implied overplanting of 110MW out of the 350MW of installed capacity as the available grid capacity and connection agreement is 240MW.
- 3.2.100. The overplanting ratio proposed is considered by the Applicant to lie within the zone in which the benefits of overplanting are maximised (1.3– 1.5x grid capacity).
- 3.2.101. The ExA notes the fact that the mitigation and enhancement areas for the Proposed Development are significantly larger (395ha) than the majority of the other projects considered (Appendix A, Summary of Applicant's Oral Submissions at CAH2) [[REP7-035](#)]. This includes fields earmarked for the provision of skylark plots. However, insofar as the principle of development, such an extent of mitigation and enhancement should not necessarily be considered as a negative. Indeed, this area supports the biodiversity net gain objectives for the Proposed Development as discussed later in this report.
- 3.2.102. In terms of the scale of the PV array areas, and acres per MW (2.9), the ExA agrees that the Proposed Development falls within the range (between 2 to 4 acres per MW) identified in paragraph 3.10.8 of 2023 draft EN-3. This is based on the assumption, as argued by the Applicant, that the range is intended to include 'associated infrastructure' as stated but not mitigation and enhancement areas. It is noted that, if the whole of the Order Limits were to be included, then the ratio figure would be significantly higher, noting the extent of mitigation and enhancement areas required in this case. However, we consider that this could reasonably vary from case to case, based on the project specific circumstances.
- 3.2.103. In addition, the ExA accepts the case made for overplanting made by the Applicant, recognising the support for this approach also expressed in 2023 draft EN-3.

Scope – the absence of battery storage

- 3.2.104. The absence of a BESS was identified by MPAG as a reason why the Proposed Development and grid connection is sub-optimal and less beneficial to meeting needs [[REP2-090](#)]. This is because without a BESS, energy generated by the solar farm during periods of low demand cannot be stored and released to the National Grid when demand is high. It also does not provide a facility for energy to be imported from the National Grid during low demand and exported back in period of high demand.

- 3.2.105. MPAG drew attention to the fact that other NSIP scale solar projects including, Longfield, Cleve Hill, Sunnica, Gate Burton and Cottam include BESS and make the case for storage. Such projects identify benefits associated with BESS including greater carbon saving opportunities and in supporting the National Grid to balance supply and demand. Co-location of BESS with generating stations is also a benefit to the National Grid Electricity System Operator (NGESO) where connections are to the transmission network [[REP10-024](#)].
- 3.2.106. The Applicant elaborated on the reasons set out in the Statement of Need [[APP-202](#)] as to why BESS was not proposed at ISH1 and in its subsequent submission at Deadline 4 [[REP4-022](#)]. It explained that an import and export connected BESS is currently not possible without significant upgrades to the Ryhall National Grid substation. Such works are cited by the Applicant as being very expensive and would also lead to a long delay in the ability of the project to power the grid.
- 3.2.107. An export only BESS that would store and export energy generated by the solar farm is also cited by the Applicant as being unviable commercially as it would have less throughput than an import / export facility. To improve viability, the Applicant states that the overplanting ratio would need to be increased which would in turn increase the size of the project and local impacts.
- 3.2.108. The Applicant concludes by highlighting that whilst a BESS is not included, the Proposed Development seeks to utilise existing infrastructure and that it has a grid connection agreement for 240MW (AC) from 2028 that would provide low carbon energy. Furthermore, it identifies that there is no policy requirement to co-locate BESS with solar generating stations [[REP4-022](#) and [REP10-013](#)].
- 3.2.109. The ExA accepts that whilst a BESS, particularly with an import/export connection, would provide additional benefits, this is currently not possible due to provision at the existing National Grid Ryhall substation. To address this would delay the point at which the Proposed Development could begin to make an important contribution towards the UK's urgent low carbon energy needs.
- 3.2.110. Moreover, whilst the 2023 draft EN-3 is supportive of solar that is co-located with other functions such storage to maximise the efficient use of land, this does not translate to a requirement that BESS must be provided. Whilst onsite BESS would enhance the efficiency of land use, this has been demonstrated as being unviable at the present time. We are satisfied that the absence of BESS is a neutral factor that does not weigh against the Proposed Development in the planning balance.

Time period for operation of the Proposed Development

- 3.2.111. The 2023 draft EN-3 states that Applicant's should consider the design life of solar panel efficiency over time when determining the period for which consent is required (paragraph 3.10.56). It says that an upper limit of 40-years is typical, although applicants may seek consent without a time period or for differing time periods of operation. It goes on to

acknowledge (paragraph 3.10.58) that solar panel efficiency deteriorates over time and applicants may elect to replace panels during the lifetime of the site.

- 3.2.112. MPAG's final position on this matter is set out in paragraphs 6.1 to 6.8 of its Final Position Statement [[REP10-024](#)]. Its earlier response to ExQ2 1.0.5 suggested that 30 years would be an appropriate time limit [[REP5-031](#)]. SKDC [[REP10-014](#)], RCC [[REP10-020](#)] and LCC [[REP8-024](#) and [REP8a-11](#)] all consider 40-year rather than 60-year operational time period is appropriate. The Applicant's final position is set out in paragraphs 1.54 to 1.62 of its Closing Submission [[REP10-013](#)].
- 3.2.113. The Applicant's desire to retain reasonable flexibility for the length of the operation period is acknowledged. However, whilst the need for renewable energy for the remainder of this century seems likely to be ongoing, what is less certain is how different technologies will best and most sustainably meet the need in future.
- 3.2.114. We have considered the implications of the 60-year operational time limit taking account of the Applicant's Statement on 60-Year Time Limit [[REP7-038](#)] and the concerns raised by Interested Parties in this regard including the requests for a shorter 40-year time period. A 40-year time period would, itself be of considerable length, the proposed 60-year period yet more, effectively covering two generations. The implications of and effects arising under both scenarios would be long term in either case.
- 3.2.115. A shorter time limit would provide an opportunity, if necessary, for further applications to be submitted towards the end of, for example, a 40-year period, to extend the life of all or part of the scheme for a further period. Any such application would be able to be considered against the relevant policies, including energy policies, including need for solar projects, at that time.
- 3.2.116. The Applicant has argued that there is no planning reason for imposing a shorter operational time limit in this case. With the proposed mitigation in place, as secured through the DCO and discussed in Chapter 3, we do not consider that the difference between a 40 and 60-year operational time period would be likely to lead to any material changes to the assessment of effects, notwithstanding that the duration of effects would be reduced for the longer period.
- 3.2.117. In relation to the proposed 60-year time period, within paragraphs 7.4.2 to 7.4.14 of this Report we consider the definition of 'maintain' as included in Article 2 of the draft DCO [[REP9-005](#)]. As set out there, we do not consider that the Applicant has been particularly clear during the Examination about whether it would wish to replace the solar panels (over and above general maintenance) during operation. A 60-year period would, in our view, increase the likelihood of this being required, noting that this is a scenario that is envisaged as an option in paragraph 3.10.58 of 2023 draft EN-3. Relevant measures have been put in place in the outline OEMP [[REP10-006](#)], including to limit the maximum number

of daily HGV movements during operation to ensure that no additional significant effects would result in this regard.

- 3.2.118. We agree with MPAG that this could result a situation where, if all or the majority of panels were to be replaced, this would have to be done so on a gradual basis over a considerable period of time under the terms of the final draft DCO. The Applicant argues that this would not lead to any material new or materially different environmental effects than those identified in the ES for the operation of the Proposed Development. The outline OEMP has also been updated (paragraph 2.2.4) with a safeguard to require that the relevant planning authority must first confirm (following submission of details by the Applicant) that any maintenance activities involving panel replacement would not lead to such materially different effects.
- 3.2.119. Furthermore, the definition of maintain in the draft DCO has been amended to make this clear in addition to providing that maintenance does not allow the replacement of the whole of Work No. 1 at the same time. Whilst such wording is rather ambiguous as it may allow for example of 80% of the solar panels to be replaced at the same time, it would be a matter for the Applicant or Undertaker to decide how it maintains the solar farm in the future within the constraints of the DCO, including panel replacement. If the replacement of panels cannot be efficiently achieved within the constraints of the DCO then it would remain an option for a revised DCO to be sought at that time and subsequently considered on its merits.
- 3.2.120. Section 2.4 of outline OEMP (as referred to in Requirement 18 of the draft DCO) would provide that decommissioning works for any part of the Proposed Development must commence within a 12 month period of that part ceasing to generate electricity.
- 3.2.121. In conclusion on this matter, we are satisfied that the measures within the final draft DCO, including the outline OEMP, would provide sufficient safeguards to ensure that significant adverse effects would not result during a 60-year operation period from panel replacement. We note that 2023 EN-3 (3.10.56 to 3.10. 58) recognises that applicants may seek consent without a time period and may elect to replace panels during the lifetime of the site. Having considered all relevant matters, we consider that there is not an overriding reason to limit the operational period to less than 60-years in this case.
- 3.2.122. If, however, the SoS disagrees, and wishes to restrict the operation period to, for example, 40-years, then Requirement 18 (1) of our recommended DCO would need to be amended to reflect this and there would also be implications for Requirement 19 (Long term flood risk mitigation) of our recommended DCO (which would not be required for a 40-year operational time period).

Site selection and alternatives

- 3.2.123. The Applicant's approach to site selection and consideration of alternatives was contested during the Examination by IPs, including RCC,

SKDC and MPAG. No agreement was reached on the matter by the parties by the close of the Examination. The extent to which the Applicant considered agricultural land and land use in this process was particularly prominent. MPAG and some residents also queried the extent to which alternative technologies had been considered [[REP2-091](#)].

- 3.2.124. Agricultural land matters are discussed here to the extent that they relate to site selection and the size of the development. Other agricultural matters are addressed in Section 3.7 of this report.
- 3.2.125. As a starting point in the site selection process, we note that the Applicant sought to identify a suitable grid connection point. An Early Site Environmental Red Flag Review was then undertaken by the Applicant on available land to identify key constraints [Appendix F of [REP2-038](#)].
- 3.2.126. There was recognition from IPs including RCC [[REP2-048](#)] and MPAG [[REP9-023](#)] that the availability of a grid connection was a key consideration. However, MPAG was concerned that it cannot be the determining factor as there are many other factors relating to impacts that should be taken into account.
- 3.2.127. In ExQ1 (question 1.3.2), we sought details from the Applicant on ten other potentially available substations with the capacity for large scale solar within 80km of the National Grid Ryhall substation as referenced in the Site Selection Assessment [Appendix 1 of [APP-203](#)]. The Applicant duly responded and confirmed that none were deemed to be alternatives to the Ryhall substation [[REP2-037](#)]. None were considered capable of supporting additional connections before 2030 (in contrast to the 2028 connection agreement at the Ryhall substation). The Applicant also highlighted that it sought to maximise existing grid infrastructure in line with paragraph 3.10.38 of the 2023 draft EN-3.
- 3.2.128. The ExA is satisfied that the availability of the grid connection at Ryhall is a significant factor in the site selection process and that there are no other realistic alternatives that would meet the same objectives of the Proposed Development.
- 3.2.129. MPAG and LCC, amongst others, raised concerns that a smaller site had not been considered. The ExA also sought clarification on the approach taken by the Applicant in this regard at ExQ1. In response the Applicant, referred to 2011 EN-1 which does not set a general requirement to consider alternatives or to establish whether a development represents the best option. In addition, it drew attention to 2011 EN-1 and 2023 draft EN-1 that indicate that only alternatives delivering the same infrastructure capacity (including energy security and climate change benefits) should be considered. Smaller alternatives would not deliver the same capacity. In this context, the ExA is content that the lack of consideration of smaller sites should not weigh against the Proposed Development.
- 3.2.130. In relation to agricultural land, the Applicant explains in its Planning Statement that consideration of DEFRA's predictive agricultural land

classification (ALC) mapping indicated that the Order limits were broadly in an area of “low” likelihood of BMV land in comparison with some of the surrounding area which is classified as “moderate” or high” as illustrated in Figure 12.4 of Chapter 12 of the ES (Land Use and Soils) [[APP-042](#)]. However, MPAG raised concerns that as the subsequent soil surveys revealed a higher proportion of BMV land than the predictive mapping suggested [[REP2-090](#)] further consideration should have been given to identifying alternatives with lower quality land.

- 3.2.131. Once the site was selected, this was later supplemented with soil surveys with the resulting removal of fields prior to the submission of the application that were found to consist entirely of Grade 2 agricultural land. The extent of soil surveys within the Order limits is considered separately in Section 3.7 of this report. At ExQ1 (question 1.3.6), the ExA asked the Applicant to explain why only Grade 2 land in such fields had been removed when it was present across other fields of mixed grading. At ExQ2 (question 7.0.4), the ExA asked the Applicant to justify the inclusion of fields that consist entirely of mixed Grade 3a and 2 (i.e. BMV land).
- 3.2.132. In response to the former, the Applicant outlined the reasons why farming patches of a higher grade land within individual fields was not practical [[REP2-037](#)]. Regarding the latter, the Applicant responded that the three fields within the PV array areas that are mixed Grade 3a /2 comprise approximately 7.5% of the installed capacity of the Proposed development and so are integral to the delivery of renewable energy [[REP5-012](#)].
- 3.2.133. In ExQ2 1.2.1 we sought views from the Applicant, local authorities Natural England and MPAG as to whether soil surveys should have been undertaken outside of the Order limits in order to inform site selection and confirm if lower grade agricultural land was present elsewhere. The Applicant considered that it would not be proportionate to do so and reiterated its approach which used publicly available mapping. Natural England [[REP5-037](#)] broadly reflected this position. Meanwhile, LCC, [[REP5-019](#)], RCC [[REP5-024](#)], SKDC [[REP5-025](#)] and MPAG [[REP5-031](#)] all considered that such work should have been undertaken and limited weight should be given to the Applicant’s consideration of alternatives as a result.
- 3.2.134. During ISH4 [[REP7-036](#)], the Applicant provided further explanation as to why soil surveys outside of the Order limits were not undertaken. It again pointed to the need for proportionality. Such an exercise would also need to obtain consent for landowners. Furthermore, if the use of BMV parcels within the Order limits was to be avoided with the inclusion of lower grade land elsewhere, the Proposed Development would be more spread out, with a longer cable route to connect to the Ryhall substation and therefore more land would be required.
- 3.2.135. In response to a question from the ExA at ISH4 drawing comparison with the approach to soil surveys taken at Longfield, the Applicant clarified that whilst soil surveys were undertaken beyond the final Order limits for

that scheme, they were within the same landholding. Changes to the Order limits were then made in response to remove some, but not all, BMV land. This approach was considered by the Applicant to be similar to that taken for the Proposed Development.

- 3.2.136. At ExQ2, the ExA sought opinions from IPs on whether 2023 draft EN-3 paragraph 3.10.14 should be interpreted as meaning that the agricultural use (and extent of BMV land) be considered as a predominant factor in the site selection process.
- 3.2.137. The Applicant responded by stating that "land type" as referenced in the NPS relates to agricultural land and brownfield land and therefore they should not be predominating factors in determining the suitability of a site [REP5-012]. However, it acknowledged that agricultural use should still be considered as an important factor, alongside other environmental matters. This interpretation was highlighted by the Applicant as being consistent with the approach taken by both the ExA and SoS in the consideration of the Longfield solar project.
- 3.2.138. A range of alternative interpretations from IPs were put forward. Natural England stated that agricultural land and the impacts on it should be considered but that the decision maker should determine whether agricultural land quality is a determining factor on a case by case basis [REP5-037].
- 3.2.139. RCC considered that the NPS requires the Applicant to demonstrate that the use of agricultural land is necessary and that the use of BMV land should be predominant in site selection [REP5-024].
- 3.2.140. SKDC also emphasised the need for the use of agricultural land to be justified but that this is not a predominating factor. However, SKDC also stated that where a site has a high proportion of BMV land, this could be a predominating factor [REP5-025].
- 3.2.141. LCC's position was that the use of agricultural land (including BMV land) needs to be shown to be necessary in the first instance and then that poorer quality land is not available in the site selection process.
- 3.2.142. MPAG stated that the use of agricultural land and the extent of BMV should be considered as a predominant factor, which in the case of the Proposed Development, renders the site unacceptable [REP5-031]. It is noted that MPAG and the Applicant agree that the availability of a grid connection is a key consideration to start site selection in combination with a suite of other considerations as outlined the SoCG [REP9-023].
- 3.2.143. Having reviewed the respective points on view on this issue, the ExA considers that whilst agriculture use should not be a predominant factor in determining the suitability of the site, it is a significant one that needs to be considered in the context of wider policy. 2023 draft EN-3 does not state that the use of agricultural land, including BMV should be a predominant factor. Indeed, it recognises that "*the development of ground mounted solar arrays is not prohibited on agricultural land classified 1, 2 and 3a...*".

- 3.2.144. At ISH1 [[REP4-022](#)], the Applicant and IPs, including RCC agreed that the 2015 WMS which requires “compelling evidence” to justify the use of BMV agricultural land should be given weight alongside the draft NPSs. The WMS is now over eight years old and pre-dates more recent expressions of Government policy and legislation such as the British Energy Security Strategy and Climate Change Act 2008 (2050 Target Amendment) Order 2019. Therefore, given this context we have given it only moderate weight.
- 3.2.145. Turning to the remaining agricultural land and land type factors influencing site selection as detailed in the 2023 draft EN-3. Paragraph 3.10.14 requires that “where possible” previously developed, industrial and contaminated land should be considered. The Applicant’s Planning Statement sets out why such opportunities have not been utilised. We consider that appropriate consideration has been given to such opportunities.
- 3.2.146. Paragraph 3.10.14 also requires that the use of agricultural land is shown to be necessary, and that poorer quality land should be preferred to higher quality land (avoid the use of BMV where possible). The Applicant has explained its choice of site in its Planning Statement that in order to deliver the capacity available from the grid connection, BMV land is required to be used. The Applicant has also demonstrated that through the design process, areas of Grade 2 agricultural land have been removed to reduce the amount of BMV land to be used. Whilst fields consisting of Grade 3a and mixed Grade 3a and 2 remain, their removal would reduce the contribution of the Proposed Development to the achieving net zero and energy security. Similarly, reducing the size of the Proposed Development would not achieve the same level of benefit in this regard.
- 3.2.147. Furthermore, 2023 draft EN-3 is clear that solar is not prohibited on BMV land and that it is likely that some agricultural land may be used for projects at this scale. Whilst the development is not co-located with storage to maximise the efficient use of land, it does include the scope for the continuation of agricultural use as considered in Section 3.7 of this report.
- 3.2.148. Field surveys have been used to establish agricultural land classification within the Order limits and to inform soil management in each phase of the development. A Soil Management Plan (SMP) is secured by Requirement 14 of the DCO which must be substantially in accordance with the outline SMP which was subject to scrutiny during the Examination. The extent of soil surveys and the suitability of soil management measures are discussed further in Section 3.7 of this report.
- 3.2.149. In light of the above, we are satisfied that the approach to site selection, including the consideration of agricultural land, satisfactorily adheres to 2023 draft EN-3. The 2015 WMS requires compelling evidence to justify the use of BMV agricultural land. Soil surveys were not undertaken outside of the Order limits to identify other potential areas of lower grade

agricultural land but the approach taken is considered by the ExA to be proportionate in drawing upon existing mapping data as a starting point for site selection purposes. As we consider that the Applicant has reasonably and satisfactorily evidenced the use of BMV land, taking into consideration the relevant draft NPS tests, we are satisfied that that the Proposed Development generally accords with the WMS.

- 3.2.150. Minerals safeguarding policies set in 2011 EN-1, 2023 draft EN-1 and local policies in Rutland and Lincolnshire are considered to have been satisfactorily addressed. The minerals resource would not be permanently sterilised.
- 3.2.151. We consider though that there is some conflict with local policies in relation to site selection. For instance, the proposal cannot demonstrate the support of the community as required by SKLP Policy RE1. However, on the whole, the proposals broadly align with local policies, including the approach in relation to agricultural land set out in SKLP Renewable Energy Appendix 3 (Solar Energy Criterion 9) that requires consideration of poorer quality agricultural land, soil surveys within the proposed site and justification of the location in relation to the grid connection and its capacity.
- 3.2.152. IPs, including MPAG [[REP2-090](#)], CPRE (Cambridgeshire and Peterborough) [[REP2-066](#)] and CRPE (Rutland) [[REP2-068](#)] suggested that the Applicant should have given consideration to alternative technologies such as wind and rooftop solar. However, the ExA notes the Applicant's reasoning in Chapter 4 of the ES as to why onshore wind is not suitable for the Order limits. Issues cited include the low yield relative to other parts of the UK, environmental effects and the current national policy context which is not favourable. MPAG's WR provided evidence that the local wind profile may yield more energy than suggested by the Applicant. However, this does not address the policy constraints associated with onshore wind.
- 3.2.153. In relation to rooftop solar, the Applicant [[REP3-023](#)] outlines that it would not be enough to deliver the level of solar generation required to achieve net zero. The ExA also notes that the need for NSIP scale solar is also identified in 2023 draft EN-1 and EN-3.
- 3.2.154. At ISH1, the Applicant also highlighted the recent Sizewell C judgement in which the judge said that one need only consider alternatives within the relevant technology type and it would be an "*absurdity*" to suggest otherwise [[REP4-022](#)]. Furthermore, the ExA is mindful of the extent to which 2011 EN-1 and 2023 draft EN-1 require alternatives to be considered. Accordingly, we are satisfied that the Applicant's approach is appropriate.
- 3.2.155. MPAG's WR also identified concerns regarding the Applicant's conclusions in ruling out an east/west panel orientation as discussed in Chapter 4 of the ES [[APP-034](#)]. In particular MPAG point to the scope for an increase in panel density associated with this orientation resulting in less land being needed with a potential reduction in landscape effects. However,

the Applicant considered that landscape effects with this orientation would be greater given the comparative lack of spacing between the panels [[REP3-023](#)]. The ExA is satisfied that the Applicant considered this alternative to the extent that it is required to do so by 2011 EN-1 and 2023 draft EN-1.

Conclusion

- 3.2.156. It is clear to the ExA that there is an urgent need for utility scale solar PV in order to meet the Government's net zero and energy security objectives as well as its legal obligations. This is reflected in the 2023 draft EN-1 and EN-3. The SoS is directed to give substantial weight to this need by 2023 draft EN-1.
- 3.2.157. The Proposed Development would make a demonstrable contribution to these needs and is capable of doing so within a reasonably short timeframe, therefore supporting the Government's aim of a five-fold increase in the deployment of solar by 2035. Accordingly, we afford substantial positive weight to the need for the Proposed Development.
- 3.2.158. In relation to site selection, we consider that the Applicant has met the requirements of national policy and broadly adheres to relevant local policies. The use of agricultural land has been shown to be necessary. An area of relatively poorer quality agricultural land was initially identified based existing ALC mapping in the vicinity of the Ryhall National Grid substation. The use of BMV agricultural land has not been avoided. However, the design evolution of the Proposed Development led to the removal of fields entirely within Grade 2. Nevertheless, there remains some residual harm with the use of BMV land. This issue is considered further in Section 3.7 of this report.
- 3.2.159. The Proposed Development is of a substantial scale but not significantly proportionately larger in terms of acres per MWp when compared with other NSIP solar projects. It also falls within the range of 2 to 4 acres per MW as identified in draft NPS EN-3. Overplanting is proposed and this does have the consequence of increasing the size of the Order limits and PV array area. However, the concept of overplanting is supported by draft NPS EN-3. The potential effects associated with the scale of the development are considered later in this report, including Section 3.5 and 3.6.
- 3.2.160. A BESS is not included and so the Proposed Development may not contribute as much towards the National Grid as a project with the ability to import and export electricity. However, it does utilise the existing infrastructure at the Ryhall National Grid substation and the provision of the necessary upgrades to support a BESS would delay the point at which energy is generated. Furthermore, whilst national policy recognises the benefits of co-location with storage, there is no requirement for this to be provided.
- 3.2.161. We are satisfied that alternatives, including alternative technologies have been considered in a proportionate manner in accordance with requirements of 2011 EN-1, 2023 draft EN-1 and the EIA Regulations.

- 3.2.162. We consider that there is not an overriding reason to limit the operational period to less than 60-years. If, however, the SoS disagrees, and wishes to restrict the operation period to, for example, 40-years, then Requirement 18 (1) of our recommended DCO would need to be amended to reflect this.
- 3.2.163. Overall, we consider that the Proposed Development generally accords with the policy support for renewable energy generation and the legal obligation to reduce greenhouse gases. We give substantial weight to the benefits of the Proposed Development.

3.3. AIR QUALITY

Introduction

- 3.3.1. This section considers air quality matters including relevant effects on human health and ecology relating to the Proposed Development.

Policy background

National Policy Statements

- 3.3.2. The 2011 EN-1 recognises that energy infrastructure development can have adverse effects on air quality for human health, habitats and species during the construction, operational and decommissioning phases. It also highlights that the planning and pollution control systems are separate but complementary and that the Examination should work on the assumption that the relevant pollution control regime will be applied and enforced by the relevant regulator.
- 3.3.3. Where a project is likely to have adverse effects on air quality, the Applicant should assess the effects of the Proposed Development in the ES. Paragraph 5.2.7 of the 2011 EN-1 states that the ES should describe details including emissions, mitigation, existing air quality levels and emission levels after mitigation.
- 3.3.4. Paragraph 5.2.11 states that the decision maker should consider whether mitigation measures are needed for both operational and construction emissions over and above any which may form part of the project application.
- 3.3.5. The 2023 draft EN-1 largely replicates the 2011 designated NPS. However, paragraph 5.2.9 requires the Applicant's assessment to be consistent with DEFRA's future national projections of air quality as current at the time of application with scope for more detailed modelling by the Applicant.
- 3.3.6. Paragraph 5.2.13 also gives direction to the decision maker to consider duties under other legislation including the Environment Act 2021 and to have regard to the Government's Environmental Improvement Plan. Paragraph 5.2.15 requires that substantial weight is given to air quality when a project is near to sensitive receptors, including education facilities, residential properties or a sensitive or protected habitat.

National Planning Policy Framework and Development Plans

- 3.3.7. The NPPF and local development plan policies all provide policies that broadly align with the NPSs. Namely, Rutland Local Plan Policies SP15 (Design and Amenity) and SP18 (Wind Turbines and Low Carbon Energy Developments), South Kesteven Local Plan Policies SD1 (Principles of Sustainable Development) and EN4 (Pollution Control) and Carlby Neighbourhood Development Plan Policy P.O. (Pollution Control).

Applicant's approach

- 3.3.8. Section 15.2 of Chapter 15 of the ES (Other Environmental Topics) [[APP-045](#)] considers air quality effects during the construction, operational and decommissioning phases of the Proposed Development. It also outlines mitigation measures to reduce adverse effects. Appendix 15.1 of the ES [[APP-102](#)] details air quality monitoring data for nitrogen dioxide (NO₂) taken from six locations in the vicinity of the Order limits.

Baseline conditions

- 3.3.9. Baseline conditions were reviewed having regard to data from recent RCC and SKDC Annual Status Reports and background pollution maps from the DEFRA and Local Air Quality Management website. The nearest Air Quality Management Area (AQMA) is located approximately 23.1km away in Grantham with exceedances for NO₂. Due to the distance from the Order limits and proposed construction routes identified in the outline Construction Traffic Management Plan (CTMP) [[REP7-023](#)] it is not expected that the AQMA would be affected.
- 3.3.10. Based on monitoring data in the vicinity of the Order limits and site specific baseline monitoring, NO₂ exceedances are considered unlikely. DEFRA's predicted background concentrations for NO₂, PM₁₀ and PM_{2.5} for the years 2022, 2026 and 2028 across the Order limits are all below the annual mean Air Quality Objectives.

Mitigation

- 3.3.11. Mitigation measures are identified in the outline Construction Environmental Management Plan (CEMP) [[REP8a-006](#)] to manage dust and emissions from non-road mobile machinery.
- 3.3.12. The outline CEMP includes provision for the preparation of a Dust Management Plan (DMP) in support of the Construction Environmental Management Plan (CEMP). The CEMP which must be substantially in accordance with the outline CEMP as secured by Requirement 11 of the draft Development Consent Order (DCO) [[REP9-005](#)]. Measures identified in an outline Construction Traffic Management Plan (CTMP) [[REP7-023](#)] are also deemed in the ES to minimise construction traffic related emissions. A CTMP that must be substantially in accordance with the outline CTMP is secured by Requirement 13 of the draft DCO.
- 3.3.13. An outline Operational Environmental Management Plan (OEMP) [[REP10-006](#)] and outline Decommissioning Environmental Management Plan (DEMP) [[REP10-008](#)] contain outline measures to manage air quality

during the respective phases. Detailed OEMPs and DEMPs must be substantially in accordance with the documents and are secured by Requirements 12 and 18 of the draft DCO respectively.

Summary of effects

- 3.3.14. In terms of impacts during the anticipated 24-month construction phase arising from road traffic on NO₂, PM₁₀ and PM_{2.5}, including on sensitive receptors, no significant effects are anticipated in the ES. Predicted traffic trip generation as specified in Chapter 9 (Highways and Access) of the ES [[APP-039](#)] is identified as being below Institute of Air Quality Management (IAQM) thresholds and impacts on air quality expected to be negligible.
- 3.3.15. During the operational phase, the ES also states that significant effects are not anticipated as traffic flows are expected to be below the Environmental Protection UK (EPUK)/IAQM screening criterion and no combustion plant would be present on site. It is also assumed that the number of vehicles required during decommissioning would be no greater than during construction. As such, no significant effects are identified during the decommission phase.
- 3.3.16. Residual effects are not anticipated to be significant by the ES with the mitigation measures to be implemented. Cumulative effects with other developments are not assessed as being anticipated.
- 3.3.17. In relation to eutrophication, Appendix 3 of the Applicant's Planning Statement [[REP10-011](#)] explains that Chapter 11 (Water Resources and Ground Conditions [[APP-041](#)]) considers nitrates. With the establishment of vegetation under the PV arrays, the Applicant states that there is likely to be a decrease in surface water run off rates and a reduction in nitrates to transfer into the wider hydrological network than the baseline scenario.
- 3.3.18. Appendix 3 of the Planning Statement also provides a commentary on Environmental Improvement Plan (2023) in relation to updates to the PM_{2.5} Air Quality Objective. These are a long term target of 10 µg/m³ by 2040 and an interim target of 12 µg/m³ by 31st January 2028. DEFRA's predicted background concentrations of PM_{2.5} in 2028 (the first anticipated year of operation) across the Order limits are between 7.9 and 9.3 µg/m³ which is below the interim target. At the time of writing, no projections from DEFRA past 2030 were available to consider implications the long term target. However, Appendix 3 states that significant sources of PM_{2.5} are not expected during the operational phase.
- 3.3.19. Paragraphs 1.1.61 and 1.1.62 of the Applicant's Statement on 60-Year Time Limit [[REP7-038](#)] provides a brief explanation that the introduction of a 60-year limit has no implications for the conclusions in ES regarding air quality.

Issues arising during the Examination

- 3.3.20. Whilst air quality was identified as principal issue in the ExA's IAPI, the matter was not a major point of discussion during the Examination.

Local Impact Reports

- 3.3.21. RCC's Local Impact Report (LIR) notes that solar farms are a zero-emission following construction and therefore emissions to air are considered to have a neutral impact. Provision for wheel washing was not considered to be satisfactory [[REP2-048](#)].
- 3.3.22. SKDC's LIR highlighted potential negative impacts during construction and decommissioning in terms of dust and air quality [[REP2-051](#)].
- 3.3.23. LCC did not raise any issues in relation to air quality in its LIR [[REP2-044](#)].

Dust Management Plan and wheel washing

- 3.3.24. We sought confirmation [ExQ1 2.0.1 [PD-008](#)] of the Applicant's intention to prepare a DMP in support the of detailed CEMPs as well as clarification on how the level of risk that would inform the details of the DMP would be assessed. We also sought clarification on circumstances where it may not be "reasonably practicable" to install wheel washing systems at construction compound access points to manage dust arising from construction traffic as specified in the outline CTMP and what alternative mitigation should be put in place.
- 3.3.25. In response, at Deadline 2 [[REP2-037](#)] the Applicant confirmed the intended preparation of the DMP and that detailed evaluation of the risk of dust generating activities using the detailed construction information that would be available to inform the preparation of the detailed CEMP(s), in line with Institute of Air Quality Management guidance. It also stated that all access points were expected to accommodate a wheel washing system. Manual washing would be implemented in any unforeseen circumstances where such a system could not be provided.
- 3.3.26. In response to ExQ2 2.0.1 [[REP5-024](#)] RCC stated that provisions in the CEMP and DMP would ensure that dust is managed satisfactorily. Furthermore, RCC's Summary Closing Statement provided at Deadline 10 [[REP10-020](#)] confirm that it has no concerns regarding emissions. Wheel washing measures are also agreed.
- 3.3.27. LCC responded to ExQ2 [[REP5-019](#)] by stating that it had no comments on this issue and directed the ExA to feedback from RCC and SKDC. This position is also reflected in relation to air quality in LCC's Statement of Common Ground (SoCG) [[REP9-020](#)].
- 3.3.28. SKDC's response at Deadline 5 confirmed that it was satisfied with mitigation measures to be provided in the DMP [[REP5-025](#)]. SKDC's final

Statement of Common Ground [[REP9-021](#)] with the Applicant also highlights that mitigation measures in the outline CEMP are agreed.

Effects on human health and ecology

- 3.3.29. Some concerns were raised by other IPs regarding the possible air quality effects in relation to human health and ecology, primarily during the construction phase. These included WRs from residents and Ryhall and Belmesthorpe Parish Council [[REP2-226](#), [REP2-181](#), [REP2-064](#)]. The Mallard Pass Action Group also identified concerns regarding construction related air quality impacts on ecology, including Sites of Special Scientific Interest (SSSI) in the vicinity of the Order limits [[REP2-090](#)].
- 3.3.30. The Applicant responded to these issues at Deadline 3 [[REP3-025](#)] drawing attention to the conclusions of Chapter 15 of the ES and mitigation proposed in the outline CEMP and outline CTMP. We are satisfied that these measures would adequately mitigate any effects.

Conclusion

- 3.3.31. Baseline monitoring data and predicted background predictions do not identify any breaches within the Order limits or within the immediate vicinity. Chapter 15 of the ES and the Applicant's Planning Statement assess air quality effects as envisaged by policy and conclude that there would be no significant effects during any phase of the Proposed Development or breach of air quality limits. We agree with these conclusions.
- 3.3.32. The ExA is satisfied that the Proposed Development would not lead to a breach in a statutory limit, nor would it lead to substantial changes to air quality. Furthermore, whilst additional road traffic, non-road mobile machinery and dust arising from the Proposed Development has the potential for some impacts, particularly during construction and decommissioning, the mitigation measures as set out in the outline CEMP, OEMP, DEMP and CTMP minimise air quality effects.
- 3.3.33. As such, the ExA concludes that the Proposed Development accords with 2011 EN-1, 2023 draft EN-1 as well as the NPPF and development plan policies.
- 3.3.34. The negligible adverse effects in terms of air quality are deemed to be neutral in the overall planning balance.

3.4. ECOLOGY AND BIODIVERSITY

Introduction

- 3.4.1. This section considers the ecology and biodiversity effects of the Proposed Development. These include biodiversity net gain and effects on habitats, species and on designated sites. Matters relating specifically to the Habitats Regulations are considered separately in Chapter 4.

Policy background

National Policy Statements

- 3.4.2. Paragraph 5.3.6 of 2011 EN-1 requires the decision maker to take account of the context of climate change and to take account of any net benefits for biodiversity that low carbon energy infrastructure may provide. Development should aim to avoid significant harm to biodiversity. Appropriate weight should be attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity and to biodiversity and geological interests within the wider environment.
- 3.4.3. Paragraph 5.3.11 of 2011 EN-1 states that where a project is likely to have an adverse effect on a Site of Special Scientific Interest (SSSI) either individually or in combination with other developments, consent should not normally be granted with an exception only being made when the benefits of the project clearly outweigh the adverse effects. A similar test is applied to ancient woodland and veteran trees.
- 3.4.4. The role of regional and local sites is recognised and the decision maker should give due consideration to them. However, given the need for new infrastructure, these designations should not be used to refuse consent.
- 3.4.5. The 2011 EN-1 acknowledges that many individual species receive statutory legislative protection. Other habitats and species of principal importance should be protected. Consent should be refused where there would be harm to such species or habitats unless the benefits outweigh the harm. The decision maker should give substantial weight to any such harm.
- 3.4.6. Paragraph 5.3.18 of the 2011 EN-1 requires mitigation to be provided that is integral to the project and that addresses construction and operational matters, including restoration of habitats after construction where practicable. Opportunities should be taken to enhance existing habitats, and where possible, to create new habitats of value.
- 3.4.7. The 2023 draft EN-1 builds upon the approach taken in 2011 EN-1. It details provisions for Environmental and Biodiversity Net Gain. However, the ExA notes that Biodiversity Net Gain is not currently a mandatory requirement for NSIPs in terms of the Environmental Act 2021. Furthermore, it requires the consideration of wider ecosystem services and benefits of natural capital when designing enhancement measures. The design process should embed opportunities for nature inclusive design. The potential for energy projects to deliver significant benefits and enhancements beyond Biodiversity Net Gain is also identified.
- 3.4.8. In relation to solar PV projects, 2023 draft EN-3 details specific potential impacts that should be considered including those relating to security, buffer strips and boundaries. The potential for solar farms to increase the biodiversity value of a site is identified. Mitigation may include the

creation of new habitats such as grassland margins. Ecological monitoring is also advised.

National Planning Policy Framework

- 3.4.9. The relevant provisions of the NPPF broadly align with the draft NPSs. It advocates a commitment to improving biodiversity, minimising impacts on it and encourages the incorporation of biodiversity improvements in and around developments.

Development plan policies

- 3.4.10. Local policies generally reflect the approach taken in the NPPF. Rutland Core Strategy Policy CS21 (The Natural Environment) requires consideration of landscape character, conservation and enhancement of biodiversity, protected sites and species, priority habitats and Biodiversity Action Plan species. Rutland Site Allocations Plan Policy SP19 (Biodiversity and Geodiversity Conservation) expects all new development to maintain, protect and enhance biodiversity and geodiversity conservation interests in accordance with Core Strategy Policy CS21. Policy SP19 details the exceptional circumstances when development can be permitted that would affect sites of biodiversity and geodiversity importance, protected species, protected species and trees and hedgerows.
- 3.4.11. South Kesteven Local Plan Policy EN2 (Protecting Biodiversity and Geodiversity) states that new development proposals will be assessed in relation to biodiversity and ecological networks within the landscape and seeks to facilitate the conservation, enhancement and promotion of biodiversity in the area and to deliver a net gain. It also specifies that in exceptional circumstances where detrimental impacts of development cannot be avoided, appropriate mitigation, or as a last resort, compensation will be required.
- 3.4.12. Criterion 7 of SKDC's Renewable Energy Appendix also requires consideration of impacts and mitigation. Where an adverse effect on a protected species or habitat is identified, the applicant should demonstrate that the need for and public benefits of the development clearly outweigh the harm caused, and that mitigation and / or compensation measures can be secured to offset the harm and achieve, where possible, a net gain for biodiversity.

Applicant's approach

- 3.4.13. Chapter 7 of the ES (Ecology and Biodiversity) [[APP-037](#)] provides the Applicant assessment of effects on these matters. The chapter is accompanied by appendices. They include:
- Appendix 7.2: Assessment Methodology [[APP-060](#)].
 - Appendix 7.4: Baseline Report [[APP-062](#)] which details the results of a desk study, extended Phase 1 habitat survey, badger survey, breeding bird survey, winter bird survey and great crested newt survey conducted on behalf of the Applicant.

- Appendix 7.6: Biodiversity Net Gain Metric [[APP-064](#)] which provides the Applicant's assessment of biodiversity net gain for the Proposed Development.

Methodology

- 3.4.14. In terms of the study area, field surveys were carried out within the Order limits to establish baseline conditions due to the expected Zone of Influence of the Proposed Development. Field surveys were extended up to approximately 200m from the Order limits for wintering birds.
- 3.4.15. To aid understanding of the wider context, a desk study included searches for records of notable or protected species and nationally designated and statutory and non-statutory sites within 2km and for an internationally important designated site within 10km and internationally designated sites for bats within 30 km.
- 3.4.16. Appendix 7.2 of the ES explains that the assessment has been informed by relevant parts of the 2018 Guidelines for Ecological Impact Assessment in the United Kingdom developed by the Chartered Institute of Ecology and Environmental Management (CIEEM). However, the Applicant states that the guidance is not a prescription as to the specific methodology for undertaking an ecological impact assessment.

Baseline conditions

- 3.4.17. Statutory and non-statutory nature conservation designations within the study area are identified in Figure 7.1 of the ES [[APP-175](#) and [APP-176](#)]. As discussed further in Chapter 4 of this report, four internationally designated sites are located within 10km of the Order limits, namely; the Rutland Water Special Protection Area (SPA) and Ramsar Site, Baston Fen Special Area of Conservation (SAC), Grimsthorpe SAC and the Barnack Hills and Holes SAC.
- 3.4.18. Eight nationally important statutory designated sites are located within 2km of the Order limits that are all Sites of Special Scientific Significance (SSSI), including the Ryhall Pasture and Little Warren Verges SSSI and Newell Wood SSSI. Great Casterton Road Banks SSSI, Tolethorpe Road Verges SSSI, Tickencote Marsh SSSI, Bloody Oaks SSSI and East Wood, Great Casterton SSSI and Clipsham Old Quarry and Pickworth Great Wood SSSI.
- 3.4.19. A section of the Ryhall Pasture and Little Warren Verges SSSI lies within the Order limits with the majority being directly adjacent. This linear SSSI includes an area of semi-natural unimproved limestone grassland with adjacent species rich roadside verges. The Tolethorpe Road Verges SSSI is located 1.5 km from the Order limits and also includes grasslands adjacent to the highway. The Newell Wood SSSI comprises semi-natural woodland and is located approximately 340m to the northwest of the Order limits. All other SSSIs are located more than 400m away from the Order limits.
- 3.4.20. A total of 71 Local Wildlife Sites (LWS) are present within 2km of the Order limits. Sixteen of these sites are located within the Order limits,

including the Essendine hedgerow south side MacMillan Way LWS, Essendine Verge SE of the Freewards (N Side) LWS and the Essendine Verge (NE Side) Near North Lodge Farm LWS.

- 3.4.21. In terms of habitats, the majority of the Order limits comprises of arable farmland with low ecological value. Grassland is present, including in field margins but are now deemed to be Habitats of Principal Importance (HPI). The majority of boundaries within and on the edge of the Order limits feature native hedgerows some of which include single or several trees. All hedgerows are deemed to be HPI.
- 3.4.22. There are multiple parcels of woodland adjacent to the Order limits. None is contained within the boundary of the Order limits but several parcels are encapsulated within it. Some woodland meets the definition of the Lowland mixed deciduous woodland HPI. No ancient woodland is identified within the Order limits although parcels are present in the vicinity at Braceborough Little Wood and Newell Wood at a distance of approximately 275m.
- 3.4.23. Figure 7.2 of the ES [[APP-177](#)] identifies ponds in the vicinity, including nine ponds within the Order limits or adjacent to it. Such ponds holding water are deemed to be HPI. The West Glen River passes through the Order limits and is also assessed as being a HPI.
- 3.4.24. In relation to protected species, the closest record of a bat is 120m from the Order limits in 2005 although there are roosting opportunities within the Order limits, including trees as identified in Figure 7.4 [[APP-181](#) and [APP-182](#)]. A total of 19 badger setts were located across the Order limits, primarily in field boundaries [[APP-190](#)]. Chapter 7 of the ES also identifies that there is potential for other protected species, namely hazel dormouse, water voles and otters to be present.
- 3.4.25. Other mammals deemed to be Species of Principal Importance (SPI) such as brown hare are also present or have the potential to be. Deer are also present within the Order limits, as observed on several occasions by the ExA. However, neither native nor non-native species of deer are considered to be a valued ecological feature and are therefore not considered in the ES.
- 3.4.26. A total of 48 species of breeding birds were identified as being confirmed or likely to be present within the Order limits during the bird survey, identified in Table 9 of Appendix 7.4 of the ES [[APP-062](#)]. They include skylark for which arable farmland within most of the Order limits is suitable for breeding. Skylark is also one of the species noted as being of high or medium conservation concern in Table 11 of Appendix 7.4.
- 3.4.27. Arable farmland is also acknowledged as having the ability to support wintering birds such as lapwing and golden plover with some species present. However, the Order limits is not considered by the Applicant to be a suitable supporting habitat for any of the species listed under the designation of the Rutland Water SPA and Ramsar site.

- 3.4.28. The Order limits has suitable habitats for species of reptiles, amphibians and invertebrates with records of common lizard and great crested newt noted. The Applicant considers the majority of the Order limits to be of low value for notable plants given the intensive farming activities.
- 3.4.29. In terms of the future baseline, it is expected that in the absence of the Proposed Development, the slow decline of species nationally, and locally will continue without measures to reverse this. It is expected that intensive farming practices would remain.

Embedded mitigation

- 3.4.30. Embedded mitigation is identified in the Works Plans [[REP7-005](#)] and Green Infrastructure Strategy in the outline LEMP [[REP7-021](#)] and the Design Guidance as specified in the Design and Access Statement [[REP5-058](#)]. Measures includes the retention of the majority of existing hedgerows, minimum offsets to landscape and ecological features and designations and the retention of arable agricultural land that would be managed to provide skylark plots at a rate of two per Hectare as recommended in the Royal Society for the Protection of Birds (RSPB).
- 3.4.31. In addition, 13.9km of new hedgerows, 7.5km of tree belt planting, new wet woodland planting and the grasslands are also proposed.
- 3.4.32. The outline CEMP, OEMP, LEMP and DEMP provide further measures to reduce the risk of effects during the construction, operational and decommissioning phases such as the provision of fencing to prevent damage to features and species. Security fencing around the PV arrays area would incorporate small openings (approximately 30 x 30 cm) to enable access for badgers, brown hare and hedgehogs. The internal cable network would be Horizontal Directional Drilled (HDD) underneath the West Glen River and so adjacent water vole and otter habitats are not expected to be impacted.
- 3.4.33. Otter holts, bat and bird boxes are also proposed as enhancement measures. An Ecological Clerk of Works would oversee the monitoring and implementation of mitigation.

Biodiversity Net Gain

- 3.4.34. Appendix 7.6 of the ES [[APP-064](#)] applies Natural England's Biodiversity Metric 3.1 to calculate that the Proposed Development would provide a Biodiversity Net Gain (BNG) for habitats (72.19%) and hedgerows (40.83%). A 0% change is calculated for river units.
- 3.4.35. Whilst no gain in river units is calculated, paragraph 2.1.6 of Appendix 7.6 of the ES explains that the Applicant has engaged with Anglian Water who have identified the West Glen River for potential works to improve biodiversity and riparian habitats as part of their Catchment Based Approach partnerships programme. These works are deemed to be mutually compatible with the Proposed Development. To support this objective, the Design Guidance specified in the Applicant's Design and Access Statement states that "*The Proposed Development will be*

cognisant of and contribute positively where possible to conservation works planned by Anglian Water to the West Glen River." However, this does not represent a commitment on behalf of the Applicant to deliver river units.

- 3.4.36. The draft DCO as originally submitted with the application included Requirement 7 (2) (a) [[APP-017](#)] to secure a minimum of 10% BNG for the whole life of the Proposed Development.

Additional mitigation

- 3.4.37. Due to effects on the LWS identified below resulting from the provision of temporary passing places, hedgerows would be re-planted along with a species rich grassland to add to the semi-improved grassland along the roadside verge.
- 3.4.38. A licence would be sought for work within 250m of pond 13 due the risk of injuring individual great crested newts.

Summary of effects

- 3.4.39. Table 7-1 of the ES provides a summary of effects. No significant adverse effects are identified. Residual adverse effects during the construction phase are identified at a District level, but not deemed significant in EIA terms for the following that would arise during the construction phase:
- Loss of hedgerow (approximately 75m) within Essendine hedgerow south side MacMillan Way LWS due to the need to increase visibility splays. This would constitute a loss of approximately 15.6% of the LWS.
 - Loss of grassland within Essendine Verge SE of the Freewards (N Side) LWS and Essendine Verge (NE Side) Near North Lodge Farm LWS with the creation of a passing point (approximately 20m long and 2m wide) for construction traffic on Uffington Lane in each LWS. Uffington Lane provide access to the Primary Construction Compound.
- 3.4.40. The potential for accidental damage to the Ryhall Pasture and Little Warren Verges SSSI and Tolethorpe Road Verges SSSI and LWSs is identified but the ES deems that effects would be avoided or reduced to insignificant through the implementation of measures identified in the outline CEMP and DEMP. No impacts to the SSSIs assessed as being likely to occur as a result of noise or air pollution due to measures in the construction methodology and traffic levels during all phases of the development.
- 3.4.41. Residual adverse effects at a site level, but not in EIA terms are also identified during construction for badgers, water voles, otters, hazel dormouse, other SPI mammals, yellow wagtail and lapwing, nesting birds and amphibians.
- 3.4.42. Table 7-1 of the ES identified a residual effect at "Site – District" level for bats. However, in response to ExQ1 3.0.7 [[REP2-037](#)], the Applicant

clarified that the residual effect was at site level. As such no significant effect is identified.

- 3.4.43. A potential adverse effect at District level for skylarks due to a loss of nesting habitat is reduced to "none" with the embedded mitigation described above.
- 3.4.44. A beneficial long term residual effect at is identified for habitats in the construction and operational phase with the measures provided in the outline LEMP.
- 3.4.45. During the operational phase no significant adverse effects are identified with no effects or site to district level residual effects for protected species. Site level residual effects are identified for protected species during decommissioning.
- 3.4.46. District level residual effects are also identified in relation to the removal of the grassland habitats provided in the PV arrays areas upon decommissioning although it is stated that this would return the land to its pre-construction condition.
- 3.4.47. No significant adverse effects are identified as a result of the Proposed Development in combination with other schemes.
- 3.4.48. The Applicant's statement on the implications of the 60-year time limit [[REP7-038](#)] on the Proposed Development does not identify any changes in conclusions from the ES.

Issues arising during the Examination

Local Impact Reports

- 3.4.49. RCC's LIR [[REP2-048](#)] considers there to be negative effects in relation to nine LWSs and one SSSI that may be affected by cable routing and highways works. The proximity of the Rutland Water Ramsar site and SPA is identified with reference to its suitability for wildfowl. However, it is not considered to be functionally linked to the Order limits.
- 3.4.50. RCC also expressed concern "*that the proposed planting is limited in quality, with much of it being limited to proposed tussock grassland with wildflowers with only one small area of woodland copse and one area of wet woodland planting proposed*". This was considered disproportionate to the impact of the development and therefore would have a negative impact.
- 3.4.51. Potential negative effects on brown hare and ground nesting birds are identified with evidence suggesting that skylarks in particular are a predominant species that may be affected.
- 3.4.52. LCC's LIR [[REP2-044](#)] notes the findings of the Applicant's ES. It considers that the greatest loss would be of arable agricultural land which is judged to be a minor loss in ecological terms. The BNG proposed to be created is stated as being in excess of the 10% advocated nationally and therefore would be considered a positive impact if delivered. Scope for

additional bird and bat boxes from the numbers proposed given the scale of the Proposed Development was also identified by LCC.

- 3.4.53. SKDC's LIR [[REP2-051](#)] notes impacts on ground nesting birds such as skylarks and lapwings. The loss of breeding habitats is considered to be unavoidable. SKDC welcome the estimated BNG of 71% for habitats and conclude that it would be a significant positive benefit, if delivered. However, it also noted that Requirement 7 of the draft DCO as presented only secures 10% which would greatly reduce the benefit. Mechanisms for the protection of trees and hedgerows and new planting are deemed to be of paramount importance.

Position of the Local Authorities at the close of the Examination

- 3.4.54. At the close of the Examination, both RCC [[REP10-020](#)] and SKDC [[REP10-014](#)] identified the BNG secured through a revised Requirement 7 in the DCO , specifically, 65% net gain for hedgerow units and 36% net gain for hedgerow units, as a benefit of the scheme. LCC also welcomed the updated Requirement 7 in this regard [[REP9-020](#)].
- 3.4.55. The final SoCGs with RCC [[REP9-022](#)], LCC [[REP9-020](#)] and SKDC [[REP9-021](#)] all identify that other matters relating to ecology and biodiversity are agreed.

Natural England

- 3.4.56. At the close of the Examination all matters were agreed between the Applicant and Natural England [[REP9-019](#)]. This includes the suitability of the Applicant's shadow Habitats Regulation Assessment (as discussed in Chapter 4 of this report), ecological surveys, consideration of ancient woodland and mitigation and habitat creation through the Green Infrastructure Strategy as well as the Applicant's assessment and proposals for BNG.
- 3.4.57. In relation to protected species licencing, Natural England consider the Applicant's approach to badgers to be appropriate. A Letter of No Impediment is not sought at this stage but Table 3-2 of the final outline CEMP [[REP8a-006](#)] sets out the approach to avoid impacts following further surveys prior to construction. If necessary, a licence would be applied for at this stage. However, Natural England also state that they are unable to advise of the likelihood of any future licence being granted.
- 3.4.58. In relation to great crested newts, Natural England does not raise any concern with the Applicant's proposal to seek to enter into a District Level Licencing agreement where an impact assessment and conservation payment certificate can be issued. A District Level Licencing scheme is in operation in Rutland and South Kesteven.

Lincolnshire Wildlife Trust

- 3.4.59. The final SoCG between the Applicant and the Lincolnshire Wildlife Trust [[REP4-034](#)] confirms that agreement was reached on all matters relating to ecology and biodiversity. These include matters relating to surveys,

the methodology for the assessment of effects and the Applicant's conclusions as well as proposed mitigation and enhancement measures.

Effects on the ecologically sensitive road-side verges

- 3.4.60. There are a number of road-side verges both within the Order limits and the vicinity designated for their ecological value. They include the Ryhall Pasture and Little Warren Verges SSSI on the north-western edge of the Order limits as well as the Essendine hedgerow south side MacMillan Way LWS, Essendine Verge SE of the Freewards (N Side) LWS and Essendine Verge (NE Side) Near North Lodge Farm LWS.
- 3.4.61. Concerns regarding potential effects on these designations were identified by IPs including MPAG [[REP2-090](#)] and Dr Radley [[REP2-207](#) and [REP2-208](#)].
- 3.4.62. Through ExQ1 3.0.4, we sought justification of the Applicant's ES conclusions that the loss of 15.6% of species rich Essendine hedgerow south side MacMillan Way would constitute an effect of significance at the District level, but not in EIA terms. The Applicant responded [[REP2-037](#)] that it had applied the Chartered Institute of Ecology and Environmental Management (CIEEM) guidance and that a professional judgment is reached to determine whether an effect is significant. The loss of 15.6% was cited as the lowest geographical level of those adopted from the guidelines and was a sufficiently small area in the context of hedgerows in the wider area that it should not be considered significant in EIA terms. The ExA does not contest this conclusion.
- 3.4.63. In response to ExQ1 3.0.3, the Applicant confirmed that it did not consider that there were any reasonable alternatives to providing access point or passing place locations that would reduce the effects on LWSs. It also reiterated that the passing points were temporary and the verges would be reinstated as secured through the outline Construction Traffic Management Plan [[REP7-023](#)].
- 3.4.64. In addition, as outlined in paragraph 7.6.3 of the ES once the construction period is complete, passing points within and outside the LWSs would be removed, their footprint replaced with nutrient poor soil and seeded with species rich grassland. In response to ExQ1 3.0.6 regarding how this would be secured, the Applicant updated Section 4.2 of the outline LEMP [[REP7-021](#)] to ensure that the detailed LEMP specifies the locations and extent of planting mitigation for the creation of passing points along Uffington Lane that would be implemented post construction.
- 3.4.65. At ISH4, MPAG questioned the extent to which grassland verges would be restored. The Applicant clarified that soils removed to create the passing points would be stored until reinstatement. An updated outline CEMP [[REP8a-006](#)] also now includes measures to store appropriate seeds collected within the remaining areas of verges and potentially collect green hay prior to the re-establishment of the grassland verges. Furthermore, it requires the Ecological Clerk of Works (ECoW) to undertake a walkover of the verges where passing points are proposed

prior to the works to identify any orchids within the affected areas and update the detailed CEMP(s) to include the methodology for their translocation.

- 3.4.66. Hedgerows removed to make way for passing places would also be replaced. MPAG identify concerns regarding impacts on roadside verge from HGVs during future maintenance during the operational phase, even with the restrictions detailed in the outline OEMP [[REP10-006](#)] that limits such movements to five to-way journeys per day.
- 3.4.67. However, the Applicant's response to ExQ2 3.0.2 [[REP5-012](#)] states that due to the low volume of vehicles required for maintenance, no passing places would be required during the operational phase. Furthermore, the Applicant's response to ExQ 2 5.0.1 also points to the updated outline OEMP [[REP10-006](#)] that commits to providing RCC and SKDC with details of planned maintenance activities on an annual basis alongside a supporting environmental and traffic information to evidence that there are no materially new or materially different environmental effects arising from any planned maintenance activities when compared to those identified in the assessment of the operational phase in the ES. This would include consideration of HGV movements.
- 3.4.68. In response to ExQ1 3.0.5 [[REP2-037](#)], the Applicant explains that if passing places are required again during decommissioning, they may be re-provided. The design and location have not yet been fixed but it is assumed that they would be similar to those provided during construction with measures to minimise impacts to be included in the detailed DEMP.
- 3.4.69. In light of the above, the ExA is satisfied that the Applicant has appropriately considered the effects on the LWSs in question and provides suitable safeguarding against significant adverse effects. Nonetheless, residual adverse effects during the construction phase a District level would remain.
- 3.4.70. Turning to the Ryhall Pasture and Little Warren Verges SSSI, no passing places are proposed. The concern here related to the potential risk of accidental damage to grasslands caused by vehicles on Holywell Road that passes through the SSSI due to the width of the carriageway.
- 3.4.71. Natural England's WR [[REP2-093](#)] recognised the possibility of impacts on the SSSI during construction and decommissioning. However, Natural England were satisfied that the Applicant had considered this issue in the ES and that measures identified in the outline CEMP were appropriate to avoid significant impacts.
- 3.4.72. Holywell Road is also not a designated construction traffic route for HGVs as identified in the outline Construction Traffic Management Plan. As such, no HGVs should pass through this SSSI. However, no such restrictions are in place for LGVs or cars that may need to access the Order limits for commuting trips or deliveries.
- 3.4.73. Accordingly, through ExQ2 3.0.2 [[PD-014](#)], the ExA sought the views of Natural England and local authorities as to whether additional measures

should be included in the outline Construction Traffic Management Plan and CEMP to avoid harm to the SSSI. Natural England [[REP5-037](#)] recommended the use of signage and toolbox talks to ensure drivers were aware of the SSSI and the need to avoid mounting on to the verge to avoid damage.

- 3.4.74. At ISH4, MPAG [[REP7-057](#)] expressed concern about the extent to which any traffic restrictions could be enforced as well as the potential use of Holywell Road to access the Order limits via the Stretton and Castle Bytham junctions of the A1 further increasing the risk of damage.
- 3.4.75. Following discussion at ISH4 [[REP7-036](#)], the Applicant updated the outline Construction Traffic Management Plan (CTMP) [[REP7-023](#)] to include reference to signage or other remedial measures along Holywell Road in the event it becomes apparent that construction worker traffic is using Holywell Road. The scope of measures would be agreed with RCC as the highway authority. The outline Travel Plan has also been updated to instruct drivers not to use Holywell Road [[REP5-074](#)].
- 3.4.76. On an Unaccompanied Site Inspection on 20 October 2023 [[EV-001a](#)], the ExA observed the SSSI along Holywell Road as well as the connecting route through to the junctions of the A1 highlighted by MPAG. We consider that there is potential for the use of the routes for LGVs and cars, including the potential for trips by locally based construction workers. However, with the updates to the outline Travel Plan and CTMP as secured by Requirement 13 and the outline CEMP as secured by 11 of the draft DCO [[REP9-005](#)], we are satisfied that adverse effects on the SSSI during construction can be avoided.
- 3.4.77. The outline OEMP does not specifically address the issue in relation to traffic arising from maintenance activities during the operational phase. As outlined above in relation to the LWS, provision for an annual maintenance schedule to be submitted to RCC and SKDC is made in the outline OEMP along with evidence to confirm that there are no materially new or materially different environmental effects arising from any planned maintenance activities when compared to those identified in the assessment of the operational phase in the ES. This provides safeguarding against such effects on the SSSI in the operational phase. However, RCC and SKDC may consider the need for further details when the detailed OEMP is submitted for approval under the provisions of Requirement 12 of the DCO.
- 3.4.78. In the context of the above, the ExA is satisfied that effects on the SSSI during the operational phase can also be suitably managed.

Biodiversity Net Gain

- 3.4.79. Whilst there is currently no statutory requirement for the Applicant to achieve BNG, it made a commitment to do so. Updates to the draft DCO were made by the Applicant during the course of the Examination to increase the level of BNG that would be secured. The draft DCO as submitted secured 10% which was substantially below the amount

calculated for net gain for habitats (72.19%) and hedgerows (40.83%) as set out in Appendix 7.6 of the ES [[APP-064](#)]

- 3.4.80. Requirements 5 and 7 of the final draft DCO [[REP9-005](#)] now make provision for a minimum of 65% net gain in habitat units and a minimum of 36% for hedgerows. The LEMP should demonstrate how these minimums are met during the operational phase. In recognition of the fact that regular updates to Natural England's BNG Metric are expected, Requirement 7 also states that the metric used to calculate the BNG is to be confirmed in the LEMP.
- 3.4.81. At ISH4 [[REP7-057](#)] and in its Final Position Statement [[REP10-024](#)] MPAG accepted that the Proposed Development would deliver some BNG but contended that the calculations indicated a higher level of BNG than would be achieved in reality. Concerns included the fact that woodland excluded from the Order limits was not included within the baseline BNG calculations to make it easier to demonstrate a net gain. It was also considered that the eventual reversion of the new grassland to arable would lead to a loss of such gains initially made. However, we note that the Applicant's BNG calculations applied Natural England's BNG Metric and that Natural England is satisfied with the approach taken. In this context, we are content that Requirements 5 and 7 can be relied upon to deliver BNG at the stated level.
- 3.4.82. Furthermore, it is noted that RCC, LCC and SKDC all recognise the updated amount of BNG secured through the DCO as being a benefit of the Proposed Development.
- 3.4.83. In light of the updates to draft DCO as well as the outline LEMP, the ExA considers the Applicant's assessment of BNG to be appropriate. The level of BNG proposed and secured attract moderate positive weight in favour of the Proposed Development.

Ecological surveys

- 3.4.84. Concerns were raised by IPs in relation to the extent and timing of ecological surveys undertaken by the Applicant. These included Written Representations from MPAG [[REP2-090](#)], Fiona Beamish [[REP2-117](#)], Tracey Miles [[REP2-190](#)] and Linda Ravilious [[REP2-209](#)].
- 3.4.85. It was considered that that the Applicant had relied on local record data with surveys not carried out for bats, reptiles and harvest mice. It also considered that great crested newts had been missed due to the timing of surveys are the lack of consideration of ponds outside of the Order limits.
- 3.4.86. Concern that assessments had been undertaken between October 2021 and February 2022 and that this would not take account of seasonal variations were also raised alongside the view that inadequate consideration had been given to deer, otters or birds.
- 3.4.87. The Applicant clarified at Deadline 3 [[REP3-026](#)] that surveys for some species were not carried out as the Proposed development was designed

to avoid impacts to habitats such as hedgerows, rough grassland and woodland margins that support bats, reptiles and harvest mice.

- 3.4.88. In addition, it stated that that surveys had been undertaken in March 2021 and November 2022 as outlined in Chapter 7 of the ES and that further surveys for badgers would be carried out prior to construction. Surveys for great crested newts were undertaken on ponds within the Order limits alongside desk study work which was extended to 250m from the Order limits. Surveys of ponds with eDNA sampling for great crested newts was also undertaken within and outside the Order limits.
- 3.4.89. The Applicant clarified [[REP2-037](#)], in response to ExQ1 3.0.1 regarding the future coverage of badger surveys, that they would be carried out within 30m of construction activities and would include woodland parcels. Table 3-2 of the outline CEMP [[REP8a-006](#)] was updated to reflect this.
- 3.4.90. It is also noted that Natural England [[REP9-019](#)] and Lincolnshire Wildlife Trust [[REP4-034](#)] are satisfied with the Applicant's approach to ecological surveys.
- 3.4.91. In the context of the clarification provided by the Applicant, the ExA considers that the ecological surveys undertaken and use of existing data is proportionate and a suitable basis upon which to assess the baseline for ecological effects.

Skylarks and wintering birds

- 3.4.92. The suitability of the proposed mitigation for skylarks in terms of the method of their implementation and number per Hectare was questioned by MPAG [[REP2-090](#)]. Dr Radley [[REP2-208](#)] expressed concern that plots in the wrong place can be ineffective and even increase the risk of predation. Dr Radley also stated that additional measures such as the provision of food for chicks in spring and summer and to over winter as adults. RCC also noted [[REP2-047](#)] adverse impacts on skylarks and stressed that satisfactory mitigation should be provided.
- 3.4.93. As set out in Chapter 7 of the ES, and indicatively identified in the Green Infrastructure Strategy [[APP-173](#)], skylark plots would be provided within the Mitigation and Enhancement Area of the Order limits following RSPB guidelines. The outline LEMP provides details for their specification and requires their annual creation before 31 December. Two plots per Hectare would be provided, between 16 and 24 sqm in area and located at least 50m from the field boundary.
- 3.4.94. Plots would comprise of an uncropped area and would be created by turning off the drill during sowing to leave an unsown plot or sowing the crop as normal and spraying with a herbicide with the farm contractor making the final decision as to which option to implement.
- 3.4.95. At ISH2, the ExA queried the extent to which it was appropriate for the farm contractor to make decisions over the implementation of the mitigation plots. It also sought clarification from the Applicant on how impacts on ground nesting birds during grass cutting would be avoided.

The Applicant responded [[REP4-041](#)] by stating that the contractor would be bound by the parameters specified in the LEMP which adheres to the RSPB guidance. The LEMP is also subject to monitoring. In relation to grass cutting, this would occur in late August, at which point most ground-nesting birds have finished their nesting season meaning the number of birds present would be low. The risk to ground-nesting birds would therefore be very low.

- 3.4.96. ExQ2 3.0.6 sought clarification why further mitigation for skylarks in the form of feeding as suggested by Dr Radley was not provided. The Applicant responded [[REP5-012](#)] that the provision of plots was sufficient to compensate the loss of nesting location arising from the Proposed Development. In addition, the new grassland areas to be created would provide higher foraging value habitats. The guidance also does not refer to the need for additional feeding.
- 3.4.97. At the close of the Examination, Dr Radley [[REP10-040](#)] maintained his concerns about the lack of provision for feeding for skylark. The possibility of feeding in the new grassland was noted but Dr Radley did not consider that the Applicant had not evidenced that the mitigation was sufficient. The need for ongoing monitoring and remedial action if necessary was also stressed.
- 3.4.98. Dr Radley [[REP2-208](#)] stated that the importance of the Order limits for wintering birds had been underestimated due to limitations of the survey that was undertaken over a single Winter. As such, adequate mitigation was not provided. A request was made for management measures to be provided in the LEMP to mitigate the impacts of the development on wintering birds as well as to ensure no cumulative effects with other solar schemes on arable land across the region. The Applicant clarified in response [[REP3-026](#)] that the Green Infrastructure Strategy includes the creation of habitats and enhancement of others used by species that winter in the area. The ExA also notes that paragraph 7.5.62 of the ES identifies a beneficial effect of significance at a District level for wintering species that use hedgerows and woodland such as fieldfare and redwing (as clarified by the Applicant in response to ExQ1 [[REP2-037](#)]) with a neutral effect on other species present.
- 3.4.99. Lincolnshire Wildlife Trust [[REP4-034](#)] had no outstanding concerns regarding mitigation for skylarks or other ground nesting birds whilst Natural England considered in response to ExQ2 3.0.6 [[REP5-037](#)] that additional mitigation is unlikely to be necessary for skylarks with landscaping proposals providing a good foraging habitat provided it is well managed. RCC, LCC and SKDC did not express a view on the need for extra mitigation for skylarks.
- 3.4.100. Having reviewed the respective submissions and evidence, the ExA finds the Applicant's approach to be acceptable and considers that the provision of plots as proposed would provide sufficient mitigation. Similarly, the approach taken for wintering birds is also considered to be appropriate.

Other mitigation measures and monitoring

- 3.4.101. At Deadline 3, the Applicant responded [REP3-026] to concerns raised in RCC's LIR [REP2-048] that limited mitigation planting was proposed that focussed on tussock grassland with wildflowers grasslands and little woodland. The Applicant stated that the proposals set out in the Green Infrastructure Strategy seek to achieve BNG, complement existing habitats whilst not precluding the return of land to agricultural production in the future. As such, more diverse grasslands that would require soil inversion were not proposed. The ExA accepts the Applicant's reasoning in this regard given the need to ensure that the land is not permanently lost as an agricultural resource as discussed in Section 3.7 of this report.
- 3.4.102. In response to concerns raised in LCC's LIR [REP2-044] regarding the low number of bat and bird boxes (50 of each across the Order limits) provided as an enhancement measure in the outline LEMP, the Applicant explained that bat and bird boxes would need to be installed on mature trees and that nesting opportunities were also created through woodland, hedgerows and related management.
- 3.4.103. In response, RCC stated (ExQ2 3.0.4) that it considered the number sufficient [REP5-024]. LCC [REP5-019] maintained that further provision could be made given the number of trees and the scope to provide freestanding poles. The Applicant considered that whilst there could be more scope, there is no formal guidance on the number to be provided and over provision could be to the detriment of open nesting species. Furthermore, Requirement 7 of the DCO [REP9-005] provides for measures to be included in the detailed LEMP to be subject to approval from RCC and SKDC in consultation with LCC and Natural England.
- 3.4.104. We are satisfied with the Applicant's approach to bat and bird boxes taking into consideration that they are proposed as an enhancement measure rather than for mitigation. Furthermore, there is scope for the number to be refined at the detailed design stage when the LEMP is considered by the local authorities.
- 3.4.105. Concerns regarding the impacts of fencing on mammals including badgers, brown hare and deer as expressed by IPs, including MPAG [REP2-090] were addressed by the Applicant at Deadline 3 [REP3-026]. As discussed in Chapter 7 of the ES, the outline LEMP and CEMP gaps (approximately 30 x 30 cm) in the fencing would enable the movement of protected and notable species such as brown hare, badgers and hedgehogs to move through the solar PV array area. Fencing would prevent deer from accessing the solar PV array area, but they would be able to access other areas of green infrastructure. No significant adverse effects are identified in the ES. Effects on deer are not assessed but they are not a species of high conservation concern. The ExA is satisfied that with the measures proposed in the outline LEMP and CEMP, potential impacts on mammals would be addressed.
- 3.4.106. The suitability of monitoring details as set out in Section 6.2 of the outline LEMP in terms of frequency and the level of detail as to what was to be monitored was subject to scrutiny at ExQ2 [PD-014] and ISH4

[[EV-053](#)]. In particular, views were sought on whether the requirements set out in paragraph 3.10.121 of the 2023 draft EN-3 had been met.

- 3.4.107. Feedback from Natural England, RCC, LCC and MPAG identified a range of issues including the need for indicators of success of measures in the LEMP and the need to increase the frequency of monitoring due to the commitment to monitor the LEMP once every five years following the completion of construction.
- 3.4.108. At Deadline 7, the Applicant updated Section 6.2 of the outline LEMP [[REP7-021](#)] to clarify that following construction, monitoring of all habitats created and enhanced would be undertaken in years 1, 2, 3 and 5 against the BNG Metric habitat types and condition. Regular monitoring to support a full review and update of the LEMP every five years would also be undertaken with details provided to the local planning authorities. It also stated that details of indicators are matters for the detailed LEMP that would be subject to sign off by RCC and SKDC in consultation with LCC and Natural England as per requirement 7 of the DCO.
- 3.4.109. The ExA welcomes the additional details provided in the outline LEMP in terms of monitoring and considers them satisfactory to provide a framework for the monitoring advised in the 2023 draft EN-3. If the Proposed Development is approved by the SoS, it will be important for the local authorities to closely scrutinise measures in the detailed LEMP when submitted to them to ensure that they are satisfied with indicators to be monitored.

Conclusions

- 3.4.110. The ExA generally concurs with the Applicant's conclusions regarding effects as identified in Chapter 7 of the ES including that no significant adverse effects would result. Effects have been suitably assessed and informed by an appropriate level of surveys and adequate mitigation is secured where necessary to manage potential impacts on habitats, species including local, national and international designated sites.
- 3.4.111. Temporary harm to the Essendine hedgerow south side MacMillan Way LWS, Essendine Verge SE of the Freewards (N Side) LWS, Essendine Verge (NE Side) Near North Lodge Farm LWS is identified during the construction phase impacting upon hedgerows and grassland. Whilst this is considered to be of significance at a District level only and not in EIA terms, the harm does weigh against the Proposed Development. Limited weight is given to this harm given its scale, temporary nature and status of the LWS. Measures to mitigate potential harm to the Ryhall Pasture and Little Warren Verges SSSI, ground nesting and wintering birds are also appropriate.
- 3.4.112. In relation to 2023 draft EN-3, consideration has been given to matters relating to fencing, buffer strips and field boundaries as required and the outline LEMP provides a framework for monitoring.
- 3.4.113. Specifically in relation to SKDC's Local Renewable Energy Appendix Criterion 7 regarding adverse effects, we consider that the public benefits

of the Proposed Development in terms of energy generation and meeting net zero as discussed in Section 3.2 of this report clearly outweigh any residual harm to ecology.

- 3.4.114. Wider enhancement measures are also proposed and are embedded into the design. In relation to BNG, we consider this to have been assessed on an appropriate basis applying Natural England's Metric 3.1. We deem it to be a benefit of the Proposed Development and afford it moderate weight in the planning balance.
- 3.4.115. Natural England, the local authorities and Lincolnshire Wildlife Trust do not have outstanding concerns, subject to the satisfactory details being provided with the detailed management plans including the LEMP.
- 3.4.116. The Proposed Development is considered to accord with relevant policies in 2011 EN-1 along with the 2023 draft EN-1 and EN-3. In addition, we find general compliance with the NPPF and local development plan policies. Whilst adverse effects, including for LWSs, have been identified, the Proposed Development provides mitigation as envisaged by South Kesteven Local Plan Policy EN2 and Rutland Site Allocations and Policies Development Plan Document Policy SP19. Overall, ecology and biodiversity matters weigh positively in the planning balance. We afford this little weight on the basis that although moderate positive weight is identified for BNG, there remains some residual harm to wider ecological matters such as effects on LWSs.
- 3.4.117. Our conclusions in relation to the HRA are set out in Chapter 4 of this report.

3.5. HISTORIC ENVIRONMENT

Introduction

- 3.5.1. This section considers the effect of the Proposed Development on archaeology and the effects on both designated and non-designated heritage assets.
- 3.5.2. The SoS must comply with the requirements on listed buildings, conservation areas and scheduled monuments, set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

Policy Considerations

National Policy Statements

- 3.5.3. Section 5.8 of 2011 EN-1 relates to the historic environment. Paragraphs of particular relevance are summarised below.
- 3.5.4. It requires that in considering the impact on any heritage assets, the decision-maker should take account of the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development (paragraph 5.8.12).

- 3.5.5. Paragraph 5.8.14 recognises that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
- 3.5.6. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss (paragraph 5.8.15).
- 3.5.7. Paragraph 5.8.6 requires that the decision maker should also consider the impacts on other non-designated heritage assets, even though those assets are of lesser value than designated heritage assets.
- 3.5.8. Where there is a high probability that a development site may include yet undiscovered heritage assets with archaeological interest, 2011 EN-1 states that requirements should be considered to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction (paragraph 5.8.22).
- 3.5.9. The 2023 draft EN-1 sets out a similar approach to 2011 EN-1. It states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be (paragraph 5.9.25). The SoS should give considerable importance and weight to the desirability of preserving all heritage assets. Any harm or loss of significance of a designated heritage asset should require clear and convincing justification.
- 3.5.10. With regard to solar photovoltaic generation, 2023 draft EN-3 recognises that above ground impacts may include the effects on the setting of listed buildings and other designated heritage assets as well as Historic Landscape Character (paragraph 3.10.99). Below ground impacts, although generally limited, may include direct impacts on archaeological deposits through ground disturbance associated with trenching, cabling, foundations, fencing, temporary haul routes etc (paragraph 3.10.100). Equally solar developments may have a positive effect, for example archaeological assets may be protected by a solar PV farm as the site is removed from regular ploughing and shoes or low level piling is stipulated.
- 3.5.11. The 2023 draft EN-3 says that appropriate desk-based assessment, and where necessary, a field evaluation, in consultation with the local planning authority, should identify archaeological study areas and propose appropriate schemes of investigation, and design measures, to ensure the protection of relevant heritage assets (paragraph 3.10.104). In some instances, field studies may include investigation work (and may include trial trenching beyond the boundary of the proposed site) to assess the impacts of any ground disturbance, such as proposed cabling, substation foundations or mounting supports for solar panels on archaeological assets (paragraph 3.10.105). The extent of investigative work should be proportionate to the sensitivity of, and extent of

proposed ground disturbance in, the associated study area (paragraph 3.10.106).

- 3.5.12. Applicants should consider steps to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting (paragraph 3.10.108). Careful consideration should be given to the impact of large-scale solar farms which depending on their scale, design and prominence, may cause substantial harm to the significance of the asset (paragraph 3.10.109).
- 3.5.13. In terms of mitigation, 2023 draft EN-3 says that the ability to microsite specific elements during construction should be an important consideration when assessing the risk of damage to archaeology (paragraph 3.10.128) and that the SoS, where requested, should consider granting consents that allow for micrositing (paragraph 3.10.129).
- 3.5.14. The Secretary of State should consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as the effects on the setting of designated heritage assets (paragraph 3.10.151).

National Planning Policy Framework

- 3.5.15. Chapter 16 of the NPPF sets out national planning policy in relation to the conservation and enhancement of the historic environment.

Development plan policies

- 3.5.16. Policy EN6 of the South Kesteven Local Plan generally seeks to protect and enhance heritage assets and their setting in keeping with the policies in the NPPF. In relation to archaeology, it says that where development is acceptable in principle, mitigation through preservation of remains in situ is the preferred solution.
- 3.5.17. Policy CS22 of the Rutland Core Strategy generally requires the quality and character of the built and historic environment to be conserved and enhanced. The Rutland Site Allocations Plan Policy SP20 reinforces this requirement. With regard to archaeology, it says that proposals on areas that are of known or suspected archaeological interest must be accompanied by a field evaluation that determines the significance of the archaeological remains and assesses the implications of development on those remains. Developments that would adversely affect other important archaeological remains will only be acceptable where the benefits outweigh the harm to the remains and the value of retaining the remains in situ, the degree of disturbance has been minimised and satisfactory provision is made for evaluation, excavation, recording and interpretation.

The Applicant's Approach

- 3.5.18. Chapter 8 of the Environmental Statement (ES) [[APP-038](#)] presents the Applicant's approach and findings of its assessment of potential impacts arising from the Proposed Development on cultural heritage, encompassing buried archaeological remains, built heritage and historic landscape. It is supported by documents including a Cultural Heritage Impact Assessment [[APP-068](#)], Geophysical Survey Report [[APP-069](#)] and Interim Trial Trenching Summary Report [[APP-070](#)]. A Supplementary Trial Trenching Report [[PDA-014](#)] was subsequently submitted prior to the Preliminary Meeting, providing a more detailed assessment of the previously completed archaeological fieldwork.

Archaeology

- 3.5.19. The ES recognises that groundworks during construction have the potential to affect buried archaeological remains, although it states that the overall footprint of the development (including piling, topsoil stripping, cable trenching and foundation excavation) is anticipated to be very limited in extent, and subsequently the potential for remains to be potentially encountered and impacted is also limited.
- 3.5.20. In respect of trial trenching for archaeological evaluation, the Assumption and Limitations set out in Chapter 6 of the ES recognise that a fine balance must be had to minimising the impact of this work whilst attempting to better understand the extent and importance of buried archaeological remains. Most importantly, it says that this must be undertaken within the context of a robust understanding of the likely impacts of the Proposed Development, which in this case it considers are relatively limited.
- 3.5.21. To establish the baseline, a geophysical survey was undertaken covering the areas where physical development is proposed within the Order limits. In addition, trial trenching was carried out across the solar PV site and proposed substation locations, targeted to explore the areas of greatest archaeological potential, focusing on locations identified during the desk-based assessment and geophysical survey. Trenches were also deployed to investigate areas where the geophysical survey had interpreted discoveries as being of likely geological origin rather than archaeological interest and in areas where there was no specific intelligence to suggest archaeology, but to test the quality of the geophysical survey.
- 3.5.22. The Applicant's surveys indicate that buried archaeological remains of early prehistoric to post-medieval dates survive within the Order limits, which it considers to be of no more than medium importance. It considers that the nature of much of the Proposed Development will result in minimal ground disturbance and a suite of proposed mitigation measures are available to be employed in the detailed design phase. Following the implementation of the proposed embedded mitigation, it states that effects can be avoided or minimised to a non-significant level.

Designated and other non-designated heritage assets

- 3.5.23. No designated heritage assets comprising Listed Buildings, Conservation areas, Scheduled Monuments or Registered Parks are located within the Order limits.
- 3.5.24. The Applicant's assessment of the significance and effects upon the significance of designated heritage assets is set out in its Cultural Heritage Impact Assessment [[APP-068](#)].
- 3.5.25. The Applicant identified 98 Listed Buildings within 1km of the Order limits, mostly located in clusters within villages of Ryhall, Braceborough, Uffington, Little Casterton and Great Casterton. Of these, the Grade II* Listed Church of St Mary in Essendine (50m to the west of the Order limits) and the Grade II Listed Banthorpe Lodge (190m to the east of the Order limits) were considered for detailed assessment.
- 3.5.26. The Applicant's embedded mitigation includes the incorporation of the Mitigation and Enhancement Areas within the north and north-eastern parts of the Order limits to maintain a degree of separation to surrounding designated heritage assets, including the Scheduled Essendine Castle, Grade II Listed Church of St Mary in Essendine and the Grade II Listed Banthorpe Lodge. Separation is also provided to the non-designated Braceborough Lodge on Carlby Road. These are marked A and H respectively in Figure 24 of the Cultural Heritage Impact Assessment [[APP-068](#)].
- 3.5.27. The Scheduled Monument of Essendine Castle is located adjacent to the Church of St Mary in Essendine and has also been assessed in detail (marked A on Figure 24). Other nearby Scheduled Monuments were scoped out of further detailed assessment.
- 3.5.28. The non-designated Braceborough Lodge (marked 80 on Figure 5 of the Cultural Heritage Impact Assessment) was also identified as warranting detailed assessment.
- 3.5.29. Six Registered Parks and Gardens lie with 5km of the Order limits including Burghley House to the south. The Applicant explains that they do not warrant further assessment taking account of there being no meaningful historic associations or intervisibility with the Proposed Development and their distances from the Order limits. Similarly, with no meaningful intervisibility or know historic associations with the land within the Order limits (and specifically the Solar PV site) the four nearby Conservation Areas at Ryhall, Braceborough, Greatford and Uffington were not considered to warrant further assessment.

Historic landscape

- 3.5.30. The Applicant notes that the Order limits retain an agricultural character, consistent with its use since at least the post-medieval period. Given the considerable boundary loss following the amalgamation of enclosures in the late 20th century, it considers this historic landscape type to be of negligible importance. It goes on to note that a number of hedgerows and wooded elements of the post-medieval field system remain, some of which meet the criteria of 'important' historic hedgerows. These are

common and well understood landscape features of only limited evidential and historic value.

Applicant's summary of effects

3.5.31. The Applicant's summary of effects on cultural heritage is set out in Table 8-3 of the ES [[APP-038](#)]:

- During construction Neutral or Minor Adverse residual effects would result upon archaeological remains from construction activities, including those associated with mounting structures (piles);
- Neutral residual effects would result upon the setting of Essendine Castle Schedule Monument;
- Neutral residual effects would result upon the setting of the Grade II Listed Church of St Mary and the Grade II Listed Banthorpe Lodge;
- Neutral residual effects would result upon the setting of the non-designated Braceborough Grange.

Issues arising during the Examination

Local Impact Reports (LIR)

3.5.32. LCC's LIR [[REP2-044](#)] concludes that significant negative impacts would result for potential cultural heritage assets, in particular in respect of buried archaeology, as a consequent of the failure to have carried out sufficient evaluation and assessment to enable potential impacts to be identified, assessed and for an appropriate mitigation strategy to be identified. It raises concerns at the very small percentage of archaeological trial trenching that has been carried out meaning it has not been possible to properly assess and understand where archaeology is across the impact zone and its extent, depth and character. It notes that the percentage of trial trenching undertaken is equivalent to 0.21% of the site whereas it would expect at least 3% to be undertaken in order to inform an effective mitigation strategy.

3.5.33. RCC's LIR [[REP2-048](#)] concludes that:

- Taking account of intervening screening and resulting visual separation, the effects on the setting of Grade II* Church of St Mary and the Essendine Castle Scheduled Monument would be neutral;
- Due to the nature of the boundary of the Ryhall Conservation Area and the relationship between it and the site, there is not considered to be any impact from the Proposed Development upon it;
- There would be a negative effect upon archaeology as the assessment is inadequate and incomplete and does not provide enough information to fully understand the impacts. The principal construction compound has not been evaluated and the lack of trial trenching means it is unclear whether the proposed approach

is achievable. The trial trenching fails to meet the recommended 2-5% sample size of the area.

- 3.5.34. South Kesteven District Council's LIR [[REP2-051](#)] notes LCC's concerns that insufficient evaluation of the extent of archaeological potential across the site has been undertaken and therefore the significance of the any impact is unclear, requiring further consideration.

Historic England (HE)

- 3.5.35. In its final SoCG with the Applicant [[REP9-018](#)] HE considers that the Applicant's assessment of designated heritage assets and their setting appears proportionate and that the potential effects appear appropriately mitigated. HE notes that despite its landscape scale, the scheme has, it appears, addressed the setting of designated heritage assets through design (layout and deployment of green space).
- 3.5.36. With regard to buried archaeological remains (which is not covered in the matters considered in its SoCG), its earlier Relevant Representation [[RR-0415](#)] notes that avoidance and mitigation can be achieved through layout, deployment of green space and construction options for cabling and panel mounting etc.. HE says that sufficiency of field evaluation is vital because some features (such as early medieval burial grounds or Roman high-status buildings) would be both of high importance and high sensitivity to the insertion of panel mounting piles. It subsequently refers to the expertise of local authority archaeological advisors and notes that (should development consent be granted with appropriate requirements) they would advise upon the acceptability of written schemes of investigation.

Archaeology

- 3.5.37. The matter of the acceptability of the Applicant's archaeological evaluation remained an issue of dispute throughout the Examination. In its final SoCG [[REP9-020](#)], LCC records its objection to the Applicant's outline Written Scheme of Investigation (WSI) [[REP8-017](#)]. This is due to the outline WSI saying that further trial trenching will not be used in the proposed solar PV array areas as the piling for such works are likely to avoid all or any surviving remains.
- 3.5.38. RCC's [[REP9-022](#)] final SoCG also expresses concerns regarding the inadequacy of the trial trenching and the content of the outline WSI. In summary, it says that:
- The outline WSI does not consider site-specific constraints, requiring the submission of further detailed WSIs at a later stage;
 - It lacks clarity regarding the extent of the significant areas of archaeological remains;
 - It does not appropriately consider the potential issues of the various design solutions and there is a lack of clarity regarding the feedback loop between the evaluation and the site design; and
 - There is no scope for consideration of ridge and furrow earthworks as a factor in the mitigation; and

- It considers that the outline WSI should be retitled the Outline Archaeological Mitigation Framework.

- 3.5.39. The Applicant's final position on this matter is set out on pages 11 to 14 of its Closing Submissions [[REP10-013](#)]. It reiterates the need for assessments to be proportionate and that the approach for a solar scheme would not be the same as, for example, a residential development where below ground impacts are wholesale. Following desk-based research and geophysical surveys, the trial trenching was targeted to investigate those areas which have the greatest potential for buried archaeological remains. The Applicant considers that the effects of the piles on archaeological remains would be insignificant and that other effects from the proposed substation, construction compounds, inverter stations and other materially ground disturbing activities may require mitigation.
- 3.5.40. Table 3-3 of the final Outline Construction Environmental Management Plan [[REP8a-006](#)] sets out that ongoing archaeological evaluation and assessment under the WSI will allow for identification of any areas where concrete shoes/blocks may be required, and also where preservation in situ is the preferred strategy. Requirement 6 of the draft DCO [[REP9-005](#)] has been updated to require that the detailed designs (including layout) take account of the results on any archaeological investigations or evaluations carried out pursuant to the outline WSI.
- 3.5.41. The Applicant considers that the suite of mitigation measures described in the outline WSI is more than sufficient to further explore the potential for buried remains and avoid or record buried archaeological remains to off-set any harm.
- 3.5.42. The Applicant considers that the approach is comparable and consistent with that taken in the recent Longfield Solar Farm DCO 2023. It does not consider that the local authorities' position is informed by the specific site conditions nor informed by specific government policy position regarding proportionate assessment, noting the 'generally limited' impacts of solar PV developments. It also says that the approach to the outline WSI being one document in terms of next steps for archaeological matters is an acceptable approach, consistent with the approach on DCO's such as [A303 Stonehenge](#) and [Tilbury 2](#).
- 3.5.43. Following the provision during the Examination of the outline WSI, Requirement 10 (Archaeology) of the draft DCO [[REP9-005](#)] was updated to simply require that the authorised development must be carried out in accordance with the outline WSI.
- 3.5.44. Notwithstanding and without prejudice to its position, following ISH2 the Applicant in acknowledging that the SoS may decide to take a different view, suggested a 'without prejudice' alternative Requirement 10 (Archaeology) of the draft DCO [[REP4-041](#)]. This provides for the provision of any further trial trenching to be approved by the SoS post-consent and for any necessary updates to be made to the outline WSI. The drafting provides for the SoS rather than the relevant local authorities to consider the additional trial trenching details, as the

Applicant says that the local authorities would be highly likely to reject any proposals put forward by the Applicant at that stage.

3.5.45. The draft 'without prejudice' Requirement 10 states:

- 1) *The authorised development must not commence until:*
 - a) *A scheme for additional trial trenching has been submitted to and approved by the Secretary of State, in consultation with both relevant planning authorities, Lincolnshire County Council and Historic England;*
 - b) *Additional trial trenching has been carried out in accordance with the scheme approved under sub-paragraph (a); and*
 - c) *Updates are made to the outline written scheme of investigation to account for the results of the additional trial trenching carried out and the updated outline written scheme of investigation is submitted to and approved by both relevant planning authorities in consultation with Lincolnshire County Council and Historic England.*
- 2) *The authorised development must be carried out in accordance with the updated outline written scheme of investigation approved under paragraph 1(c).*

3.5.46. The Applicant has also drawn attention to the potential for archaeological remains within the Order limits to have already been disturbed by ploughing activity (up to 600mm depth, with an average depth of 400mm) in connection with the existing agricultural use of the land. The Applicant estimated that, based on the illustrative layouts, there will need to be 100,00 to 125,000 piles and considers that the impact of any potential archaeological material would be so *de minimis* that any damage or loss (were it to occur) would be insignificant, such that sufficient remains would be left undisturbed, and their significance retained. The maximum depth of the mounting structure panels would be 2.5m as set out in the Design Parameters [[REP7-013](#)].

3.5.47. We note that, at Deadline 9, in response to our Rule 17 request [[PD-018a](#)] regarding the interpretation of the term 'low-level' piling (as referred to in paragraph 3.10.101 of the 2023 draft EN-3), the Applicant explained that in rural contexts buried archaeological remains typically survive between 400mm and 1000mm beneath the ground surface. Mallard Pass Action Group [[REP9-038](#)] considers that modern farming practice involves the use of minimal tillage techniques that do not turn over the soil and therefore do not disturb the soil below a depth of 150mm. In any case, from the evidence we consider that, whilst original remains near the surface could well have already been damaged by ploughing, the effect of ploughing on archaeological remains is and would not be of such an extent in this case to rule out any further threat from piling upon such remains.

3.5.48. The Applicant's interpretation of 'low-level' piling in the context of 2023 draft EN-3, to which no disagreement was raised, was that it can only mean 'infrequently occurring' rather than the actual depth of the piles. In this case the Applicant has calculated that only 0.06% of the total site

area would be disturbed by the insertion of piles, which it considers, by its very definition, to be 'low level'.

- 3.5.49. Paragraphs 3.12 to 3.19 of the outline WSI [[REP8-017](#)] are of particular relevance here in considering the impact of piling upon the PV solar array areas, including 'preservation in situ' and the net result of, at worse, a neutral effect. In paragraph 3.19, the Applicant goes on to discuss the possibility of the presence of human remains and that human remains could be interred near to the known sites of the remnants of pre-historic and Roman period settlements. In this respect, the outline WSI [[REP8-017](#)] says that, additional means of mitigation can be employed through the exclusion of areas of buried archaeological remains from the solar PV development and/or the use of 'concrete shoes' or other non-piling techniques for discrete areas. It states that it is feasible and potentially desirable for both options to be deployed together within areas of known or discovered archaeological remains.
- 3.5.50. We agree that the Proposed Development, especially the areas of solar PV arrays would clearly not result in the levels of disturbance that would be created by a development project such as a new residential development. We also agree that the use of a particular percentage requirement for trial trenching across the site would not be appropriate, noting that this is not stipulated in any relevant guidance. That is not to say, however, that adverse effects can be ruled out. It appears from the evidence in this case that the depth of mounting structure piles would have the potential to harm archaeological remains potentially found at greater depth than would be reached by ploughing, albeit only a very small percentage of ground would be disturbed by the piling.
- 3.5.51. We concur with RCC's [ExQ2 6.0.2 [REP5-024](#)] response, including that the extent of a scheme's ground disturbance is not directly comparable to the percentage of proposed archaeological evaluation and mitigation, given the different outcomes that are generated. Whilst archaeological investigation would lead to an outcome (including reporting and finds), piling within adequate evaluation would lead to an increased risk of damage to any deposits with no useful or meaningful archaeological record being made. Effects from piling cannot be satisfactorily mitigated as it is unlikely that any useful or meaningful record can be made, whereas archaeological evaluation and mitigation can lead to different outcomes including reporting of finds. We also acknowledge RCC's concerns that a geophysical survey is not a definitive indicator of archaeological remains and that in this area it is difficult to identify the presence of earlier prehistoric and Anglo-Saxon remains.
- 3.5.52. Furthermore, without any further trial trenching there does not appear to be an opportunity for any further evaluation that would allow the Applicant to identify where further mitigation such as concrete block or avoidance might be required, outside the areas of known archaeology.
- 3.5.53. In spite of the Applicant's comparison with the Longfield DCO, the level of evaluation required is likely to vary from site to site based upon the particular circumstances and archaeological sensitivity of each respective

site. In this case, the land within the Order limits appears to be of some notable sensitivity based upon the results of evaluation carried out and the level of overall historic interest of the area, including several Scheduled Monuments located outside of but not far from the Order limits. This includes the possibility of human remains as noted above. Despite the relatively low level of ground disturbance that would arise from the proposed piling, adverse archaeological effects cannot be reasonably ruled out.

- 3.5.54. The 2023 draft EN-3 says that the extent of investigative work should be proportionate to the sensitivity of, and extent ground disturbance in, the associated study area. Given that the evidence indicates that ploughing would not have been or be likely to reach the depths of all archaeological remains, in addition to the site appearing to be of some archaeological sensitivity, in our view the extent of trial trenching that has been carried out in this case appears to be limited. Whilst the Applicant draws attention in its Supplementary Trial Trenching Report [[PDA-014](#)] to there being extensive areas and clear evidence of modern ploughing disturbing buried archaeological remains, this is not to say that existing archaeology does not exist beneath the levels of ploughing.
- 3.5.55. We therefore recommend that Requirement 10 (Archaeology) of the Applicant's final draft DCO is amended to broadly reflect its 'without prejudice' drafting, requiring further trial trenching to be approved and to inform a revised outline WSI. Taking a reasonable approach in doing so, would enable any appropriate micro-siting of solar PV arrays and related infrastructure where appropriate and/or the use of any necessary concrete shoes to minimise or avoid any underground archaeological remains. The precise drafting of Requirement 10, including who should be the discharging authority, is considered further in Chapter 7.
- 3.5.56. We also note the position of LCC in its response to ExQ2 5.2.5 [[REP5-019](#)] that if no additional trial trenching is required, then it should be made explicitly clear that the WSI should include Archaeological Strip Map and Record² (SMR) in all areas not previously evaluated. Our recommended approach with the revised Requirement 10 means this is effectively irrelevant as further trial trenching would be more appropriate, and, in any case, we do not suggest that the use of SMR would be a proportionate response to a scheme of this nature.
- 3.5.57. LCC also suggests that Requirement 10 should make explicitly clear that additional trial trenching consists of 2% trenching across the red line boundary. Nevertheless, we do not consider it appropriate to set a 'target percentage, more to ensure that those areas of the site at the most potential risk are properly evaluated. For example, as RCC points out [ExQ2 6.0.2 of [REP5-024](#)], where there are existing anomalies not so far examined, around the periphery of geophysical clusters, to determine the

² Archaeological SMR means that all overburden (topsoil and subsoil) is removed in spits to the archaeological horizon to expose any surviving archaeology so it can be mapped, investigated and recorded as necessary.

boundary of appropriate mitigation areas and additional testing areas of negative geophysical response.

- 3.5.58. MPAG have also raised the issue of potential archaeological disturbance from the replacement of piles or mounting structures over the lifetime of the scheme. The Applicant has proposed the use of non-corrosive materials which we consider would reasonably reduce the likelihood of replacement piles or mounting structures being required (secured through PL3.12 of the Design Guidance [[REP5-058](#)]). Measures to ensure details of any replacement or removal of piles during operation and decommissioning are also secured through the outline OEMP [[REP10-007](#)] and outline DEMP [[REP10-009](#)].
- 3.5.59. Furthermore, any significant risk of archaeological impacts through the replacement of piles and mounting structures as part of the scheme's maintenance or their removal during decommissioning, would be removed following the further trial trenching that would be secured by the revised Requirement 10, that would provide further evaluation of the presence of archaeology within the proposed PV array areas.
- 3.5.60. Taking all these matters into account, with the draft wording of Requirement 10 in place making provision for further trial trenching as appropriate, we are satisfied that the Proposed Development would be capable of appropriately safeguarding archaeological assets at the site.

Designated heritage assets

- 3.5.61. Whilst the effects on the setting and significance of designated heritage assets was not a particularly controversial issue during the Examination, it remains necessary to comply with the requirements on listed buildings, conservation areas and scheduled monuments, set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.
- 3.5.62. As a general point, we do not consider that the proposed 60 year time operational time period would serve to significantly reduce the effects in comparison to a permanent permission (this also applies to our consideration of non-designated heritage assets).

The Scheduled Monument of Essendine Castle and Grade II* Listed Church of St Mary

- 3.5.63. Essendine Castle moated manorial site is recorded by Historic England as being the most impressive of its kind in Leicestershire, with its exceptionally large ditches and pronounced inner banks indicating the defensive nature of the site. Its significance is primarily derived from its evidential value from the physical remains of the earthworks, as well as the historical illustrative value associated from the upstanding earthworks, and the surviving below ground archaeology.
- 3.5.64. The Grade II* Listed Church of St Mary is located within Essendine Castle's boundary and dates from the 12th and 13th century. It exhibits illustrative and associative values through its narrative of the development of the castle and the village from the medieval period onwards. Its significance

is primarily derived from this historic (illustrative and associative) value, and its aesthetic and evidential value arising from its physical form, survival of fabric and elements of medieval and modern craftsmanship. It also has communal value, being an important communal and ritual space for Essendine and its surrounds from the 12/13th century onwards.

- 3.5.65. The castle and church are located within a small river valley of the West Glen River on the eastern side of Essendine. The most important elements of their setting comprise their immediate surrounds which contribute to the understanding of historic function of a former rural castle with an associated church within its enclosure. Their site is bordered to the east by mature trees, the West Glen River with the A6121 beyond. The wider rural setting, including fields within the Order limits make a more limited contribution to the significance of both the castle and church, although much of this agricultural landscape in the vicinity has been altered to allow for larger fields.
- 3.5.66. There is limited visibility between these historic assets and the Order limits. Whilst this is greatest in the winter months, the available views from the Order limits are not of any notable relevance to its significance. The fields within the Order limits nearest to both assets will remain as open fields, with the nearest PV arrays being approximately 340m to the east behind an existing field boundary. They would be little or no visibility of the PV arrays and associated infrastructure from the historic site although the character of the open rural fields would change. However, taking account of this spatial and visual separation, along with the limited role the fields within the Order limits add to the significance of both these designated assets, we agree with the Applicant's assessment that no harm would result to their significance in either case.
- 3.5.67. The Applicant's assessment does note that should any future investigations within the site demonstrate a direct historic association between the Order limits and these designated assets, it is possible that it could be considered a component of their setting. The Applicant explains in its answer to ExQ2 6.0.8 [[REP5-012](#)] that there is no evidence for surviving and associated buried archaeological remains within the Order limits proximate to Essendine Castle. It goes on to say that in the unlikely event that remains survive the suite of mitigation measures, including in the outline WSI will ensure that impacts are avoided or mitigated.
- 3.5.68. We consider that it is reasonable to find, from the evaluation carried out to date, that the setting of the castle and church would be preserved, noting that Requirement 6 (Detailed design approval) of the draft DCO [[REP9-005](#)] requires that the details submitted demonstrate how they have taken account of the results of any archaeological investigations or evaluations carried out pursuant to the outline WSI.

Grade II Listed Banthorpe Lodge

- 3.5.69. The Grade II Listed Banthorpe Lodge is located approximately 190m to the east of the site between the Great North Railway line and the West

Glen River. It is an L-shaped 17th century farmhouse that was raised and altered in the late 18th century and further altered in the 19th century. It has evidential value deriving from its tangible physical remains and the historic fabric of the post-medieval farmhouse. The craftsmanship and quality of its building materials provide aesthetic value and the building serves as a surviving example of historic settlement patterns and vernacular architecture, providing it with historical value. All these factors contribute to its historic significance.

- 3.5.70. The enclosed plot and the additional structures to the immediate east, contribute to the asset's immediate setting and an understanding of its historic function as a house and former farmhouse. The land within the Order limits forms part of the wider agricultural rural landscape surrounding Banthorpe Lodge and thus makes a limited contribution to its importance. The busy ECML that adjoins the garden's northern boundary impinges upon, to a certain extent, the setting of this asset.
- 3.5.71. Primarily due to the existing mature screening, there is limited inter-visibility between the site and Banthorpe Lodge. The open field/meadow immediately to the south of the garden and West Glen River does not form part of the Order limits. Proposed PV arrays are proposed in the fields (Field Refs 49 & 53) [APP-112] beyond this on the opposite side of main road and in the existing field (Field Ref.25) to the south-west. There is no known historic functional links between the building and the farmland within the Order limits, although it remain possible that a link did exist given the proximity of the former farmhouse to the fields. From the evidence, the site does not inform the understanding or appreciation of the building and the primary experience of the asset is from within its immediate private setting which would not be altered by the Proposed Development.
- 3.5.72. The proposed PV arrays and associated infrastructure would considerably alter the surrounding rural character for the operational period. We note that the physical and spatial separation, the absence of any significant invisibility and the lack of known historic association means that the adverse effects upon the setting of Banthorpe Lodge would be very limited. However, whilst the Applicant concludes that no harm would result, we find in our assessment that the, albeit minor, adverse effect on its setting would amount to less than substantial harm to the significance of this designated heritage asset, this being at the lower end of the scale.

Conservation Areas

- 3.5.73. The proposed junction improvement works in Great Casterton would not be of such magnitude to result in any adverse effects on the setting of the adjacent Great Casterton Conservation Area. Taking account of the considerable separation distance in each case and given that the Proposed Development would not alter any of the physical surrounds that contribute to their heritage significance, we are satisfied that the Proposed Development would not be located within the setting of any other nearby Conservation Area. The proposals would therefore preserve the character and appearance of each Conservation Area.

Other designated heritage assets

- 3.5.74. On the evidence provided and from observations at our site inspections, taking account of the considerable separation distances and the lack of intervisibility (as set out in the Applicant's response to ExQ1 6.0.11 [REP2-037]), we are satisfied that the Proposed Development would not lie within the setting of any Registered Park and Garden, including Grade II* Burghley House, as set out in the Applicant's Cultural Heritage Impact Assessment [APP-068]. There would therefore be no effects upon the significance of each one.
- 3.5.75. Mr Gresty raised concerns [REP2-160] regarding the effect on the character and setting of Grade II Walk Farm House and Attached Barn (located just outside of the Applicants Study Area south of Field 3 [Figure 24 of APP-068]), which has an association with the poet John Clare who lived and worked in Pickworth. We are satisfied that the considerable spatial and visual separation of this Listed Building from the Order limits would ensure that no harm would result to its setting and historic significance.
- 3.5.76. Given the significant spatial and visual separation we are also satisfied that no adverse effects would result upon any designated heritage asset within the nearby town of Stamford

Other non-designated heritage assets

- 3.5.77. The non-designated Braceborough Grange is a former post-medieval farmstead, located approximately 10m north of the Order limits on Carlby Road. The land within the Order limits forms part of the surrounding rural landscape and contributes to a limited degree to its wider setting and therefore its historic significance as a traditional farmstead.
- 3.5.78. Whilst being close to the Order limits, a considerable open buffer is proposed between Carlby Road and the edge of the proposed solar PV array area. Given the separation and limited visibility, the Proposed Development would only result in a minor adverse effect on the setting and significance of this non-designated heritage asset.

Historic Landscape

- 3.5.79. We consider that whilst the agricultural use of the land within and around the Order limits appears to have been so since at least the post-medieval period, the more recent amalgamation of field enclosures and boundary loss means that the use of the fields for the operational life of the solar farm would not have any significant adverse effect on the historic landscape type. Whilst a number of hedgerows and wooded elements remain these would be largely retained by the Proposed Development. Notwithstanding, our separate findings on general landscape character in the subsequent Landscape and Visual section of this report, we are satisfied that no significant adverse effect would result upon historic landscape character.

Conclusion

- 3.5.80. The Applicant has clearly given consideration to the effects on designated assets in both the proposed design and mitigation measures. We are satisfied that this is not a case where substantial harm would occur. In all our considerations above regarding the setting of heritage assets, we have taken account of the proposed 60-year operational period, but given the lengthy time period, we do not find that it would significantly reduce effects in comparison to a permanent permission.
- 3.5.81. We have found, however, that despite the design and mitigation measures, the Proposed Development would result in minor, and less than substantial harm, upon the setting and consequently the significance of the Grade II listed Banthorpe Lodge. We go on to consider this harm to a designated heritage assets against the public benefits of the proposal in our later Planning Balance (Chapter 5). There would also be some minor harm to the setting and significance of the non-designated Braceborough Grange, albeit noting that this asset is of lesser value in comparison to designated heritage assets.
- 3.5.82. We have found that otherwise the proposal would preserve the significance of other nearby designated heritage assets, including the Scheduled Monument of Essendine Castle and Grade II* Listed Church of St Mary. It is noted that the considerable distance from several other Scheduled Monuments, Listed Buildings, Conservation Areas and Historic Parks and Gardens would be such to prevent any likelihood of any effects upon their setting.
- 3.5.83. With regards to below ground archaeology, we have concerns regarding the Applicant's existing evaluation of potential archaeological remains, most particularly the limited overall extent of trial trenching. As such there is a risk of disturbance to, as yet, undiscovered remains from piling associated with the construction of the solar PV arrays. We consider there to be a high probability that the site may include yet undiscovered archaeological assets. In our view, the Applicant's preferred Requirement 10 (Archaeology) based on the current outline WSI would not provide sufficient scope for appropriate archaeological mitigation to be provided.
- 3.5.84. Therefore, we prefer the Applicant's 'without prejudice' version of this Requirement which, in our view, will provide an opportunity for further trial trenching to take place, to reduce any risk of harm to archaeological assets to acceptable levels. The ExA's recommended DCO therefore contains the 'without' prejudice version of Requirement 10 with amendments relating to the discharging authority as set out in Chapter 7. With this in place, there would no conflict with the relevant provisions on archaeology of the existing and draft NPSs as listed above, or the relevant provisions of the Development Plan.
- 3.5.85. We will conclude on overall policy accordance on heritage matters in Chapter 5 taking account of the public benefits balancing test. However, the minor harm to the significance of Braceborough Grange and the less than substantial harm to the significance of the designated Banthorpe Lodge weighs against the proposal, noting that great weight should be

given to a designated assets conservation and that any harm or loss of significance of a designated heritage asset should require clear and convincing justification.

3.6. LANDSCAPE AND VISUAL

Introduction

- 3.6.1. This section considers the landscape and visual effects of the Proposed Development. It includes the visual effects of the Proposed Development on the occupiers of residential properties and the effects on views of recreational users, including from PRow. Glint and glare effects are considered separately in Section 3.12 (Other matters) and effects on health and wellbeing are considered in Section 3.13 (Interactions of effects and cumulative effects).

Policy background

- 3.6.2. Both the 2011 EN-1 and 2023 draft EN-1 contain generic policy requirements in relation to the assessment of landscape and visual effects. The 2023 draft EN-3 contains relevant policy that is specific to solar photovoltaic generation.

2011 EN-1 and 2023 draft EN-1

- 3.6.3. 2011 EN-3 requires the Applicant's assessment to include effects during construction and operation on firstly landscape components and landscape character (paragraph 5.9.6), and secondly on the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity (paragraph 5.9.7).
- 3.6.4. Both 2011 EN-1 (5.9.8) and 2023 draft EN-1 (5.10.6) make clear that, having regard to siting, operational and other relevant constraints, the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. They also recognise that virtually all nationally significant infrastructure projects will have adverse effects on the landscape. The 2023 draft EN-1 also states that there may also be beneficial landscape character impacts arising from mitigation.
- 3.6.5. Paragraphs 5.9.18 of 2011 EN-1 and 5.10.13 of the 2023 draft EN-1 both state that the SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the proposal.
- 3.6.6. Both the 2011 (5.9.14) and 2023 draft EN-1 (5.10.16) are similar in requiring that where a local development document has policies based on landscape character assessment, these should be paid particular attention. However, locally valued landscape should not be used in themselves to refuse consent, as this may unduly restrict development.
- 3.6.7. Paragraph 5.9.15 of the 2011 EN-1 and paragraph 5.10.34 of 2023 draft EN-1 recognises that the scale of energy projects means they will often

be visible within many miles of the site and that the SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

- 3.6.8. Both 2011 EN-1 (5.9.22) and 2023 draft EN-1 (5.10.26) note that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within a site, design including colours and materials, and landscaping schemes, depending on the size and type of the proposal. Materials and design of buildings should always be given careful consideration.
- 3.6.9. In terms of decision making, paragraph 5.10.28 of the 2023 draft EN-1 states that consideration should be taken of the level of detailed design which the applicant has provided and is secured in the DCO, and the extent to which design details are subject to future approvals. Local authorities need to have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives.
- 3.6.10. Paragraph 5.9.16 of the 2011 EN-1 and paragraph 5.10.35 of the 2023 draft EN-1 both say that consideration should be given to whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a reasonable timescale. The Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by appropriate mitigation.

2023 draft NPS EN-3

- 3.6.11. Paragraph 3.10.28 of 2023 draft EN-3 encourages Applicants where possible to minimise the visual outlook from existing PRoW, considering the impacts this may have on any other visual amenities in the surrounding landscape. It notes (footnote 80) that screening along PRoW networks to minimise the outlook into the *solar park* may impact on the ability of the users to appreciate the surrounding landscapes.
- 3.6.12. The 2023 draft EN-3 makes clear (3.10.33 and 3.10.90) that Applicant's should consider the need to minimise the impact on the landscape and visual impact of security measures. Applicants should aim to minimise the use and height of security fencing and should, where possible, utilise existing features to assist in site security (paragraph 3.10.123).
- 3.6.13. It also notes (3.10.85) that as solar farms are likely to be in low lying areas of good exposure and as such may have a wider zone of visual influence than other types of onshore energy infrastructure. Though paragraph 3.10.86 goes on to say that whilst it may be the case that development covers a significant surface area, in the case of ground mounted solar panels, with effective screening and appropriate topography, the area of a zone of visual influence could be appropriately minimised. Paragraphs 3.10.91 and 3.10.122 highlights the importance of visual screening, the growth of vegetation on site boundaries and the

growth of existing hedges, vegetation and mature trees within boundaries.

3.6.14. Paragraph 3.10.24 says that the use of security lighting should be minimised, any lighting should use passive infra-red technology and be designed and installed to minimise impact.

3.6.15. The SoS (3.10.48) should take account of any sensitive visual receptors, and the effect of the development on landscape character, together with the possible cumulative effects.

2023 draft NPS EN-5

3.6.16. Paragraph 2.9.19 of 2023 NPS EN-5 says that applicants should carefully consider the placement and design of substations in the local landscape and consider opportunities for screening them.

National Planning Policy Framework

3.6.17. The NPPF includes that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.

The Development Plan

3.6.18. Policy EN1 of the South Kesteven Local Plan seeks, amongst other things, to ensure that development is appropriate to the character and features of the landscape and contributes to its conservation, enhancement or restoration. Policy DE1 of its Local Plan includes the aim of high-quality design for all development proposals and expects development to make a positive contribution to local distinctiveness and prevent an adverse impact on landscape character.

3.6.19. Criterion 2 of the South Kesteven Renewable Energy Appendix includes the requirement for a residential visual amenity assessment, covering an area of at least 2km from any proposed solar farm.

3.6.20. Policies CS1, CS19, CS20 and CS21 of the Rutland Core Strategy 2011 generally seek, amongst other things, to promote good design, maintain and enhance landscape character and local distinctiveness. Similar design and landscape objectives are sought by policies SP7, SP15, SP17, SP18 and SP23 of Rutland's Local Plan 2014.

3.6.21. The Carlby Parish Neighbourhood Development Plan (2018) includes the aims to ensure that development does not unacceptably impact on the character of the village, preserve views and green spaces on the entrance to the west of the village and safeguard and where appropriate incorporate traditional hedgerows and trees.

Applicant's approach

3.6.22. Chapter 6 of the ES [[APP-036](#)] presents the approach and findings of the Applicant's Landscape and Visual Impact Assessment (LVIA). It is

supported by relevant figures, appendices and documents within the ES, all of which are contained within the Application Documents section of the [Examination Library](#).

- 3.6.23. The Applicant's landscape and visual assessment methodology considers effects that are major or major-moderate to be significant in EIA terms and effects of moderate significance or less to be not significant. This differs from the other chapters of the ES where moderate effects are considered to be significant.
- 3.6.24. A general study area of 2km has been adopted, informed by the visual envelope based on the Zone of Theoretical Visibility (ZTV) study and fieldwork. The LVIA assesses both landscape and visual effects at year 1 and year 15 of operation to account for the growth of visual screening (with an assumed growth rate of 0.5m per year).
- 3.6.25. The ZTV mapping [[APP-138](#)] is based on two elements. Firstly, the maximum height parameter of the proposed on-site substation (the 13m high lightning surge protection mast) and secondly, the maximum height of the proposed PV arrays (3.3m). The Applicant considers that the ZTV study indicates that the extent of theoretical visibility arising from the Proposed Development would generally fall within 2km of the solar PV site and onsite substation, beyond which it becomes more fragmented and dispersed due to intervening landform and vegetation. The Applicant then identified its Zone of Visual Influence (ZVI) [[APP-139](#)] based on a detailed review of the ZTV and field surveys taken during both summer and winter months. It finds that there would be minimal or no visual effects to those receptors outside of the ZVI and, as such, they are not further assessed by the ES.
- 3.6.26. The site is not located within any statutory landscape designation such as National Park or National Landscape (previously known as Area of Outstanding Natural Beauty) or within a local plan Special Landscape Area. The Order limits are located within the vicinity of two former non-statutory Local Plan designations [[APP-134](#)] (which have not been saved within the adopted Rutland Local Plan):
- Area of Particularly Attractive Countryside approximately 0.5km to the north-west near Newell Wood and Pickworth; and
 - Area of Local Landscape Value approximately 0.85km to west near Ryhall.

Landscape character

- 3.6.27. The Applicant's baseline conditions note the location of the Order limits within the following national, regional and local level character areas:
- At the national level, the site is located within Kesteven Uplands National Character Area (NCA 75) [[APP-135](#)] described, in part, as a gently rolling, mixed farming landscape dissected by the rivers Witham and the East and West Glen;
 - At a regional level, the site is located within the East Midlands Regional Landscape Character Type 10 - Woods and Forests,

specifically RCLT 10(a) Forest Hills and Ridges. It's key characteristics are set out in paragraph 6.3.32 of the ES [[APP-036](#)];

- It is also located within the Lincolnshire Southern Cliff Regional Character Area (RCA 7) which forms part of the Lincolnshire Historic Landscape Characterisation Project. Most specifically it is located within the Kesteven Parklands Character Zone, the key characteristics of which are described in paragraph 6.3.36 of the ES [[APP-036](#)]; and
- At a local level, the Rutland Plateau D(ii) Clay Woodlands Landscape Character Area (LCA) covers the majority of the Order limits with the remainder of the Order limits (including the northern, eastern and southern most parts) being within the Kesteven Uplands LCA. The respective areas are shown on Figure 6.4 [[REP2-017](#)] of the ES. Paragraphs 6.3.39 to 6.3.43 of the ES [[APP-036](#)] set out the key characteristics and management objectives of these LCAs.

3.6.28. Due to the existence of the more detailed LCA's undertaken by the local authorities, the ES explains that the national and regional character areas/ types are not further assessed within the LVIA but have informed the baseline study of landscape character and site layout through the identification of key characteristics, physical and cultural influences, aesthetic and perceptual qualities, and forces for change.

3.6.29. The Applicant considers the landscape within the Order limits to be of Local/District Value. Paragraph 6.3.72 of the ES [[APP-036](#)] identifies a range of landscape features and characteristics that contribute to the value of the local landscape, including the following:

- Medium to large scale arable farmland within the solar PV site located to the east and south of Essendine;
- Chalk grassland and distinctive dipslopes as an element of geodiversity interest located to the north-west of the site along The Drift near Clay Hill;
- West Glen River extending between Carlby, Essendine, Banthorpe Lodge and Greatford;
- Framework of woodlands;
- PRoW network;
- Macmillan Way recreation trail;
- Rural lands with roadside hedgerows and wildflower meadow verges, particularly along Holywell Road to the north-west; and
- Nucleated settlement pattern including the villages of Essendine, Carlby, Ryhall and Greatford with dispersed rural dwellings, cottages and farmsteads in the wider landscape.

Visual receptors

3.6.30. Following consultation with the local authorities, the Applicant selected twenty representative viewpoints to inform the assessment of visual effects [[APP-140](#) to [APP-159](#)]. In addition, eight illustrative viewpoints have been identified seeking to demonstrate a particular effect or specific issues, which might, for example, be the restricted visibility at certain

locations [APP-160 to APP-167]. The location of the respective viewpoints are shown on Figure 6.6 of the ES [APP-138].

- 3.6.31. Photomontages have also been provided with the original application for representative viewpoints 1 [APP-168], 2 [APP-169], 4 [APP-170], 8 [APP-171] and 11 [APP-172] to illustrate the visual effects of the Proposed Development.
- 3.6.32. Visual Receptor Groups (VRG) [APP-139] have been identified where the effects are considered to be broadly similar, or areas which share particular features in common, including residents, motorists, railway users and PRoW users. These are described in further detail in Table 6-1 of the ES [APP-036].
- 3.6.33. The Applicant's assessment also includes identification of where there could be visual effects on key transport routes [APP-137] including PRoW (assessed within the Access and Recreation Assessment [APP-058]).

Residential Visual Amenity Assessment

- 3.6.34. A separate Residential Visual Amenity Assessment (RVAA) [APP-057] has been submitted to assess the visual effects of the Proposed Development upon the living conditions of properties in proximity to the Order limits. The study area comprises residential properties within 100m of the main Order Limits (located beyond the actual solar PV site area), with the addition of properties (following Stage 2 Consultation feedback) at Church Farm, Bourne Road and Heath House, the Drift, which are located 120m and 140m respectively from the Order limits. A total of 19 residential properties have been assessed. These are listed and located in Table 1 and Figure 1 of the RVAA.
- 3.6.35. The RVAA states that potential effects may include being surrounding by the Proposed Development to the extent that there is a visual overwhelming of the visual amenity from a residential dwelling, or that it is so visually prominent that it is overly intrusive. The Applicant has sought to design the solar PV site area so that it avoids locations close to any residential property and is separated by an existing or proposed physical boundary such as a woodland or hedgerow.
- 3.6.36. Potential effects would be at their greatest in year 1 of operation when new planting has only been newly established and it is on this basis that the results of the assessment have been recorded as the worst-case scenario. Table 1 of the RVAA sets out the results of the assessment, including any potential visual effect, the magnitude of change, significance of effect and mitigation measures.
- 3.6.37. Effects are predicted by the Applicant to be slight or minimal at all the properties except for adverse effects of moderate significance at both North Lodge Farm and North Lodge Farm Bungalow on Uffington Lane, and the pair of semi-detached properties at Wood Farm Cottages, also on Uffington Lane. The location of these properties is shown on Figure 1 of the RVAA [APP-057].

Embedded mitigation

- 3.6.38. The Applicant's proposed mitigation and enhancement measures to be delivered through the DCO are contained within the Design and Access Statement (Design guidance) [REP5-058], outline Landscape and Ecological Management Plan [REP4-013] and Green Infrastructure Strategy Plan [APP-173]. The Applicant's embedded landscape mitigation and enhancement measures are summarised in paragraph 6.4.3 of the ES [APP-036], including retention of existing landscape features, new planting including trees, hedgerow infilling and wildflower grassland, offsets from residential properties, PRow and permissive paths.
- 3.6.39. The outline Construction [REP8a-006] and Decommissioning [REP10-008] Environmental Management Plans also contain measures to minimise landscape and visual impacts during the construction and decommissioning phases.

ES conclusions

- 3.6.40. The main residual effects that would arise from the Applicant's assessment of landscape and visual effects are as follows (Table 6-4 of the ES [APP-036] sets out a full summary of the reported effects):

Effects on landscape character

- During construction, moderate adverse effects upon both the Rutland Plateau (Dii) LCA and the Kesteven Uplands LCA within the site and slight adverse effects on the wider landscape of both LCAs;
- During operation, major (year 1) and major-moderate (year 15) adverse effects on both LCAs within the site and slight adverse effects on the wider landscape of both LCAs; and
- During decommissioning, adverse effects on landscape character ranging from minimal to slight.

Visual effects

- During construction, major-moderate adverse effects on visual receptor groups within or immediately bordering the site. Otherwise, ranging from minimal to slight adverse effects on other Visual Receptor Groups and Key Transport Routes;
- During construction major-moderate adverse effects on three Public Rights of Way (PRow);
- During operation, major (year 1) and major-moderate (year 15) adverse effects on receptor groups within or immediately bordering the site. Otherwise, ranging from minimal to moderate adverse effects (year 1 only for Visual Receptor Group 4 – Carlby Road and Braceborough Great Wood) on other Visual Receptor Groups and Key Transport Routes;
- During operation, ranging from major-moderate to major adverse effects on three PRow;

- During operation at year 1, adverse effects of moderate significance on the visual amenity (as assessed in the RVAA) of residential properties at North Lodge Farm, North Lodge Bungalow and Wood Farm Cottages (all on Uffington Lane); and
- During decommissioning, ranging from minimal to slight adverse visual effects.

Issues arising during the Examination

Local Impact Reports (LIR)

3.6.41. Lincolnshire County Council's (LCC) LIR [[REP2-044](#)] explains that it commissioned AHA Consultants to review the landscape and visual elements. Whilst it considers that a thorough analysis of the development is provided, the following issues were raised:

- Questions regarding the selection and exact location of some of the viewpoints and photomontages, the number of photomontages appears limited;
- Some of the images used in the assessment are of less than ideal quality with dark views rendering it hard to ascertain the finer grain of information;
- Considers that Moderate effects should also be considered as being significant (not only Major or Moderate – Major);
- Would have been beneficial for the LVIA to include viewpoints beyond 2km, even if just to prove the lack of impact;
- Lack of appreciation that the road network is used by pedestrians and cyclists;
- Over reliance upon planting to screen the development without full attention to the impact that such screening would have on the open landscape;
- The number of enhancements and interventions proposed appear light for the scale of the project;
- Construction impacts appear to have been underestimated including visual impact and loss of vegetation for access requirements,
- Underestimates how challenging the current climatic conditions can be for establishing vegetation.

3.6.42. In conclusion LCC's LIR expresses concern that the development has the potential to transform the local landscape by altering the character of the area. It considers that the impacts would be negative.

3.6.43. Rutland County Council's (RCC) LIR [[REP2-048](#)] states that although it is unlikely that the entirety of the Proposed Development will be visible from any single point at one time, the extensive nature of the site will magnify the significance of the negative landscape impacts due the large area over which they will be experienced. It goes on to say that its location and spread are such that there remains a significant impact on the landscape from the proposed panel fields when travelling in and through the area for PRoW users, road users, cyclists, residents and railway passengers. It also notes that the proposal only includes two areas of proposed new woodland. It considers that the development

would have a significantly negative impact on the landscape character of the area.

- 3.6.44. South Kesteven District Council's (SKDC) LIR [[REP2-051](#)] describes the Kesteven Uplands LCA as "*The physical and human characteristics combine to create a distinctive and mostly unified and consistent landscape character. This is a mostly harmonious rural landscape, with farmland, woodland and parkland with small stone-built villages. Where the undulations are more pronounced, with small woodlands and fields, it is a relatively small-scale intimate landscape. The higher land tends to be more open with bigger fields and woodland blocks creating a larger scale yet simple rural landscape*".
- 3.6.45. The LIR questions the degree to which mitigation will be effective, particularly in the short to medium term. It confirms that its independent review by Stantec confirms that the ES comprehensively assesses the likely significant effects of the Proposed Development. In conclusion it identifies the scale and significance of the impact on the landscape and visual amenity as a potential negative impact.

Position of the Local Authorities at the end of the Examination

- 3.6.46. By the end of the Examination, LCC confirmed in its Statement of Common Ground (SoCG) [[REP9-020](#)] that it is content with the methodology and location of the viewpoints used. Both RCC's and SKDC's SoCG [[REP9-022](#) and [REP9-021](#)] do not record any matters of disagreement in respect of landscape and visual matters. Although SKDC's SoCG does note that its general concerns relating to overall impacts and wider enjoyment of the countryside remain. Its Closing Summary Statement [[REP10-014](#)] highlights its concern at the scale and significance of the impact on the landscape and visual amenity of the area.
- 3.6.47. Similarly, RCC's Closing Summary Statement [[REP10-20](#)] maintains its general position, identifying concerns regarding the landscape and visual impacts over such a large area of countryside where access to and enjoyment of the countryside form a significant part of day to day life for the residents of the nearby settlements.

Mallard Pass Action Group (MPAG)

- 3.6.48. MPAG maintained its objections on landscape and visual impacts throughout the Examination. Along with the Campaign for the Protection of Rural England (CPRE), it commissioned a landscape consultant (Carly Tinkler BA CMLI FRSA MIALE) to undertake a Landscape and Visual Review [[REP2-075](#)] submitted as part of MPAG's written representation [[REP2-090](#)]. Its main conclusions are:
- Agrees there would be significant adverse effects on the landscape character of the site, but does not agree that levels of effects beyond the site would be low nor that the proposed screening planting would be effective in reducing levels of visual or landscape effects;

- The LVIA conflates landscape and visual effects, and it underestimates levels of value, susceptibility to change, sensitivity, magnitude and thus overall levels of effects (mainly due to an insufficient baseline study and analysis);
- The Proposed Development would give rise to significant adverse effects on the landscape character of both the site and the wider landscapes, and almost certainly, on views from several km from the site;
- It would significantly adversely affect people's health and wellbeing and the quality of their lives (this is considered in section 3.13 of our Recommendation);
- From the plans and documents, it is very difficult to comprehend the sheer size and scale of the Proposed Development, and thus the very large extent of effects;
- It would not deliver any landscape or visual benefits or enhancements;
- It is highly likely that fencing would have to be far more robust than timber post and wire netting in order to deter thieves and satisfy insurance requirements. If high security fencing is used, the levels of adverse effects on landscape character and visual amenity would be unacceptably high; and
- The scale and extent of effects arising would be many times greater than those of a much smaller scheme.
- It would therefore not comply with the requirements of the relevant landscape related policies and guidance;

3.6.49. MPAG's written representation concludes that the scheme would have substantial adverse impacts on the landscape and visual amenity, and that these harms go well beyond what can be anticipated as necessary to arise with a well-located scheme. It says that the scheme is not well located and causes real harm in these respects to a deeply rural area with a local valued landscape. This factor, it states should be accorded substantial weight in the overall planning balance.

3.6.50. These points were generally reiterated in MPAG's Final Position Statement [[REP10-024](#)] at the end of the Examination. Many other representations were made regarding landscape and visual effects raising similar points to those above [for example [REP2-160](#)].

Issues regarding methodology and assessment outcomes

3.6.51. MPAG has set out its critique of the Applicant's LVIA in its Landscape and Visual Review [[REP2-075](#)]. The Applicant responded to this in writing at Deadline 3 [[REP3-032](#)] and several of the specific matters arising were discussed at ISH2 [[EV-015](#)]. The key points arising are considered below.

3.6.52. The Landscape and Visual chapter differs from the standard approach taken in the remainder of the ES in that Moderate effects are not considered as being significant and are of 'lesser concern'. Whilst noting that professional judgement has been applied and that this threshold has been considered appropriate elsewhere, we do not consider that a convincing justification has been made in this case for Moderate effects to be 'not significant'. It would otherwise create a confusing and

inconsistent approach to the ES assessment of effects. Furthermore, whilst we acknowledge that non-significant effects should not be completely disregarded, we consider that it would still lead to a risk of landscape and visual effects of the scheme being downplayed.

- 3.6.53. Therefore, in the Summary of Landscape and Visual Effects reported in Table 6-4 of the ES [[REP6-036](#)], the Moderate adverse effects assessed during construction on landscape character (both Rutland Plateau and Kesteven Uplands LCAs) along with the Moderate adverse visual effects at Year 1 on Visual Receptor Group 4 (Carlby Road and Braceborough Great Wood) would, in our view, be significant. In addition, adverse effects of moderate significance during Year 1 on the visual amenity (as assessed in the RVAA) of residential properties at North Lodge Farm, North Lodge Bungalow and Wood Farm Cottages would also be significant. No other moderate residual effects are reported in Table 6-4.
- 3.6.54. Following the introduction of the 60-year operational time limit, the Applicant suggests that the impact would be less than concluded in the LVIA as it adopted a permanent duration for operation. However, it did not change the relevant EIA conclusions and, given that 60-years is still a time period of very considerable length (covering a very substantial part of a person's life expectancy) we see no reasons for doing so.
- 3.6.55. The representative and illustrative viewpoints, along with the photomontages provided are useful in assisting with the assessment of landscape and visual effects. However, we broadly agree with the representations made that some of representative viewpoints and photomontages appear as being quite dark making it difficult to ascertain the finer detail. From our on-site observations, some of the locations chosen for the viewpoints and photomontages could have benefited from more representative locations. Furthermore, in our view, a greater selection of photomontages would have been beneficial in order to assist with an understanding of the likely effects. Indeed, we requested an additional photomontage during the Examination from Field No.35 [Photomontage F - Appendix N of [REP2-038](#)] which, in spite of MPAG's preference for a slightly different viewpoint location in terms of longer distance views, provides a helpful indication of the appearance of the solar PV site at years 1 and 15 in proximity of a PRoW.
- 3.6.56. MPAG has raised concerns regarding what it considers to be the insufficient baseline study and analysis within the LVIA. Similar concerns have not been raised by the relevant local authorities. We are generally content with the baseline study and assessment provided by the Applicant. Notwithstanding this, we have taken account of additional information provided by Interested Parties, including MPAG in our assessment of the likely effects.
- 3.6.57. Overall, despite the identified weaknesses, the viewpoints and photomontages, along with our observations at site inspections, provide us with a satisfactory basis for assessing the Proposed Development.

- 3.6.58. MPAG considers that the Applicant's LVIA has conflated landscape and visual effects. MPAG says that it has been assumed that measures proposed to reduce levels of effects on views would also reduce effects on landscape character, which, it says, they would not. We are clear that these are clearly two separate matters that need to be considered as part of the overall LVIA, although they are related. We agree with MPAG that development may affect overall landscape character, even if it is not visible from, for example, public viewpoints. However, we acknowledge that proposed measures such as new planting are able to mitigate visual effects as well as have an influence on landscape character.
- 3.6.59. Furthermore, in our view, the level of prominence of an element of the Proposed Development or an existing form of development can have some influence on the existing or proposed landscape character as it could influence how the landscape is perceived and experienced by people. In addition, the proposed landscaping can screen views but also influence landscape character where it is a typical feature of existing landscape. The Applicant's LVIA separates out its consideration of landscape and visual effects and any limited blurring of landscape and visual considerations does not, in our view, significantly affect the overall weight that should be given to the assessment.
- 3.6.60. MPAG also considers that the Applicant's LVIA double-counts mitigation measures as enhancements or scheme benefits. We note that some of the proposed landscaping features would align with those of the existing character area studies. During construction (where in any event any landscaping will not be established) and operation, we do not find there to be any material landscape or visual enhancements and as such and have considered the relevant measures as mitigation where relevant, rather than enhancements/benefits. Following decommissioning and the removal of the visual elements of the Proposed Development, elements of the matured landscaping would likely to move from mitigation to being an enhancement for landscape, but not to the extent that we would count it as a significant enhancement or benefit.
- 3.6.61. At ISH 2 [[APP4-041](#)] the Applicant confirmed that the term 'immediate environs' in the context of its assessment of landscape and visual impacts would broadly speaking be 500m from the solar PV site. Beyond this, the Applicant says that it would expect to see landscape and visual impacts tail off substantially. This has been considered in our commentary below on the relevant matters.

Effects on landscape character during operation

- 3.6.62. The Guidelines for Landscape and Visual Impact Assessment (GLVIA3) state that an assessment of landscape effects should deal with the effects of change and development on landscape as a resource. This should incorporate how the proposal will affect the elements that make up the landscape, the aesthetic and perceptual aspects of the landscape and its distinctive character.

- 3.6.63. We note that the site and its surrounds have a prevailing rural character characterised by medium to large scale arable mainly sloping farmland set amongst small areas of woodland. Many of the boundaries with the road network are characterised by established hedgerows, including some with wildflower meadow verges. The West Glen River forms a particular characteristic of the site flowing generally from north-west to south-east.
- 3.6.64. The site is set amongst a wider nucleated settlement pattern of several villages and settlements – all of which are located outside of and are separated from the area of the Order limits with several dispersed rural dwellings, cottages and farmsteads located close to the site. The character of part of the site to the south-east of Essendine is influenced to a degree by the mainline railway, existing industrial estate on the edge of Essendine along with the existing Ryhall substation and associated pylons. However, it retains a prevailing rural character. Other parts of the site, particularly the north-east and north-west sections have more of a remote character to them.
- 3.6.65. The Applicant's document '*LVIA matters including Substation*' [Appendix D of [REP4-022](#)], submitted following discussions at ISH 2, includes further detail of the assessment of proposed onsite substation and of maximum development parameters for key components of the Proposed Development.
- 3.6.66. We consider that the proposed solar PV site and onsite substation would clearly change the character of landscape from arable farmland to a solar PV development. As well as the solar PV arrays, the proposed solar stations would introduce an uncharacteristic utilitarian form to the existing framework of agricultural fields that form a particularly influential component of the existing landscape character of the site and its surrounds. Whilst the solar panels themselves, would be capable of being set out in a uniform pattern, the addition of the associated infrastructure comprising the solar stations would exacerbate the disharmony caused to the rural landscape character. Furthermore, the proposed onsite substation would be a large physical development of an industrial like character that, even considering its location near to the existing substation, and even when taking account of the railway line, pylons and commercial development on the edge of Essendine, would not accord with the prevailing rural landscape character.
- 3.6.67. We do consider, however, that the spatial arrangement of the solar PV site over an extensive area but with breaks in its layout, along with the retention of a framework of woodlands, tree belts and hedgerows, would result in the proposal being subdivided and compartmentalised within the overall landscape. This would have a role in reducing the overall perceived scale of the development, whilst still noting the large extent of the overall site. In addition, the retention of landscape features such as hedgerows and tree belts, would help to a certain degree to reduce the overall effect on landscape character. In terms of new planting, aspects such as the gapping up and strengthening of existing hedgerows, some woodland planting and the creation of grassland would help in terms of

the overall effect on landscape character. However, we acknowledge the view of several Interested Parties that some of the planting proposals, particular those intended to screen the development, would be unsympathetic with the particularly open characteristics of parts of the site, including the area of the PV array site to the east of Essendine.

3.6.68. It is generally common ground (including with the local authorities and MPAG) that Major adverse effects would result from year 1 to year 15, upon the landscape character of the solar PV site. Whilst landscape character effects can still occur even if a development is screened, in our view the maturity of some of the proposed landscape features, such as the strengthening of existing hedgerows and woodland planting would result in these effects reducing to Major-Moderate from year 15. In both cases the adverse effects on landscape character would clearly be significant including upon both the Rutland Plateau LCA and the Kesteven Uplands LCA. Whilst large parts of the overall LCAs, and the national and regional character areas highlighted earlier in this section, would be largely unaffected, the effects upon the area occupied by the Order limits and its immediate environs would be significantly adverse.

3.6.69. We generally concur with the Applicant that significant adverse effects of similar extent would broadly extend to approximately 500m of the solar PV site. Beyond this we consider that the effects on landscape character would be reduced, although this would be on a gradual basis rather than more immediately reducing to Slight adverse effects as the Applicant's assessment appears to conclude after 500m. In any event there would be significant adverse effects on the landscape character of the site and its surrounds, these effects decreasing further from the solar PV site. In this respect, including from our observations from site inspections, taking account of intervening landform and features, the significant effects on landscape character would not extend as far as 2km from the site.

Visual effects during operation

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

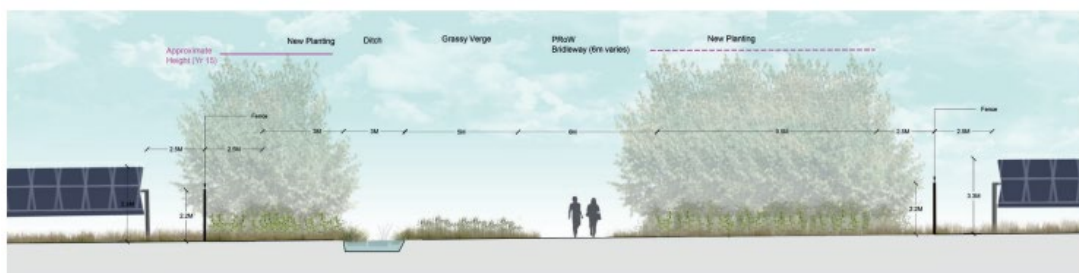
3.6.71. The Applicant's ZVI extends to 2km from the solar PV array and no viewpoints have been provided beyond 2km of the site. We note that there would be locations beyond this 2km area where part of the Proposed Development would be visible. However, we are satisfied, taking account of the existing landform and features, as well as our observations on site including from locations beyond 2km, that this ZVI is appropriate and reasonable for the assessment in this case.

3.6.72. At a maximum parameter of 3.3m in height, the proposal solar PV arrays would be conspicuous features, particularly in views in close proximity of them. Whilst the solar stations/storage containers (measuring a maximum of 3.2m in height) would also be potentially conspicuous, the Applicant's Design Guidance [PE.4.2 of [REP5-058](#)] would ensure that

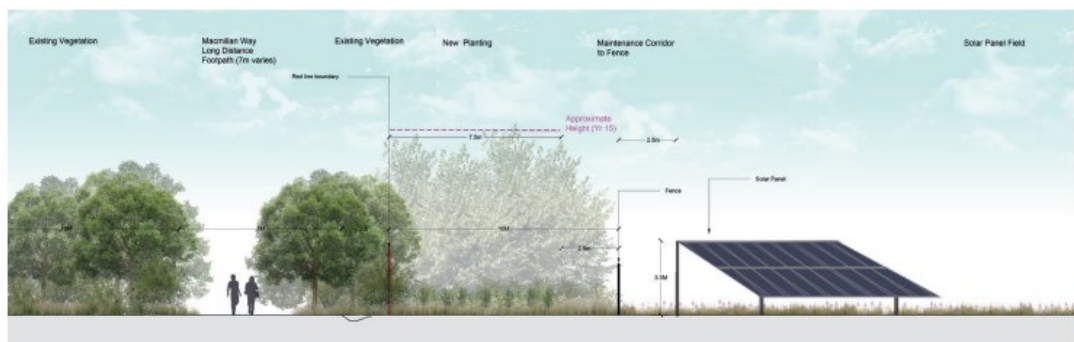
they are located at least 50m from PRow, permissive paths and rural roads (excluding A and B roads) and increased further where possible.

3.6.73. Five existing PRow would cross the Order limits. In addition, four new permissive paths (total of 7.9km in length) are proposed as part of the Proposed Development [Appendix 2 (Green Infrastructure Strategy Plan) of [REP7-021](#)]. All these paths would be provided with minimum 15m offsets on either side to the PV array perimeter fencing in order to provide visual screening of and separation from the Proposed Development for the PRow and permissive path users. Indicative sections showing how mitigation could be implemented adjacent to PRow etc are provided on page 39 of the Design and Access Statement [[REP5-058](#)] and Figure 3 below.

Figure 3: Indicative sections showing mitigation



Indicative section through bridlway (BrAw/1/1).



Indicative section through Macmillan Way long distance path.



Indicative section through The Drift, a Byway Open to All Traffic (BOAT).

3.6.74. With satisfactory planting (which will be secured by Requirement 7 (Landscape and ecology management plan) of the DCO) this screening should be capable of providing reasonable screening of the PV arrays and related infrastructure such as the proposed solar stations. However, we

note that the proposed screening planting would obstruct some previous open views that are clearly valued by local residents (for example from parts of bridleway BrAW/1/1 running from the railway bridge near Banthorpe Lodge to Carlby Road).

- 3.6.75. Following concerns raised in this regard, the outline LEMP was amended to provide that prior to the submission of the detailed LEMP(s) for approval (Requirement 7 of the DCO) the Applicant will provide opportunity for consultation with the Community Liaison Group regarding the specification of the hedgerow and tree belt planting along the PRow and permissive paths. Whilst this is laudable in terms of providing community input on the detail of such landscaping proposal, in the event that the substantial screening is not provided, the solar PV arrays and related infrastructure would be likely to be clearly and harmfully visible for PRow users in several locations in comparison with the existing situation. This would be less so in locations where there is already good screening on the edges of the PRow, for example along sections of the MacMillan Way. However, overall the adverse visual effects from PRow within and adjacent to the site would be significant.
- 3.6.76. We agree with the Applicant's assessment that these adverse visual effects on PRow users within or immediately bordering the site would be Major-Moderate.
- 3.6.77. Other visual effects would result on receptors beyond the site, albeit to a lesser degree of significance. These include moderate adverse visual effects up to Year 15 on Visual Receptor Group 4 (Carlby Road and Braceborough Great Wood) as reported in Table 6-4 of the ES [[APP-036](#)]. Generally, existing hedgerows will help to soften views from roads adjacent to the site. However, generally moderate adverse visual effects would also result from adjacent roads and PRow, beyond hedgerow boundaries and field gate openings.
- 3.6.78. The scale and extent of the Proposed Development would be visible to varying degrees from Essendine village. However, the offsets providing considerable visual separation from the proposed solar PV arrays to the edges of the village would lead to these visual effects from locations within the village being no worse than minor adverse and not significant. These offsets would also ensure that any adverse effect on the visual setting and the individual character of the village would not be significant. The visual and physical separation to other nearby settlements including Ryhall, Belmesthorpe, Carlby, Greatford, Braceborough and Pickworth would also be sufficient to prevent any significant adverse effects upon the visual setting and character of these villages.
- 3.6.79. In general terms, the further away from the solar PV site the lesser the visual effects would become, and we are generally satisfied that by approximately 500m the effects would decrease considerably. The significant adverse visual effects arising all focused either within the site or in its immediate surrounds.

- 3.6.80. The proposed on-site substation would be the largest part of development in terms of overall massing and height of its components. In response to discussions at ISH1 and ISH2, the Applicant submitted further details of its assessment of the substation in its note 'LVIA matters including Substation' [Appendix D of [REP4-022](#)].
- 3.6.81. Whilst it's detailed design would be subject to further approval through Requirement 6 of the DCO, the Project Parameters would apply including maximum heights of 13m for electrical infrastructure and 6m for the ancillary buildings. The Green Infrastructure Strategy Plan [[REP7-021](#)] includes proposed tree planting to strengthen the screening of the substation in views from the north-east. The Design Guidance with the Design and Access Statement [[REP5-058](#)] is, in our view, fairly general in terms of providing a design framework, although it does include guidance that colour schemes and materials will be sensitive to its context and that the substation platform shall be cut into the landfall (that is gently sloping) allowing for accessibility, engineering and electrical design considerations.
- 3.6.82. Despite the proposed screening, Photomontage E [[APP-172](#)] shows that the proposed substation and an area of the proposed PV arrays would be visible from the A6121 Stamford Road on the south-west approach to Essendine. It has the potential to appear as a particularly incongruous feature in this view. Whilst noting there is a considerable separation distance from the existing substation, pylons and railway line, we consider that based on the proposed parameters, at year 15 moderate adverse visual effects would still be likely to result, which we find to be significant for the reasons outlined earlier. Furthermore, in spite of the proposed landscape screening, the proposed sub-station, taking account of its likely size and form would also be likely to result in significant adverse visual effects for users of the proposed permissive path which would be located north and north-east of its location. These would be particularly significant in the earlier years of operation before the screening has a chance to mature. We find such effects to be more pronounced than the Applicant's assessment.

Issues relating to proposed fencing, lighting and CCTV

- 3.6.83. The proposed fencing to enclose the PV array areas would be 'deer fencing' comprising wooden posts and metal wire mesh up to 2m in height. Higher palisade fencing up to 3m is proposed around the perimeter of the on-site substation.
- 3.6.84. Although concerns have been raised by MPAG and others that the proposed deer fencing would be insufficient for effective security and that more intrusive security fencing may be required instead, there is no clear evidence that the proposed fencing would not be feasible or insurable in this case. The Applicant's evidence [[REP5-014](#)], including from Insurance Brokers - AMI Speciality, suggests otherwise. Furthermore, the inclusion of security measures such as the proposed CCTV cameras would enhance on-site security. The details of proposed fencing requires approval under DCO Requirement 8 (Fencing and other means of enclosure) [[REP9-005](#)].

Requirement 8(3) ensures that fencing details accord with the Project Parameters [[REP7-013](#)] and Design Guidance [[REP5-058](#)]. The Applicant would need to seek separate approval for any alternative proposals to those secured. We are satisfied that there is a reasonable expectation that the Proposed Development would be able to be implemented on the basis of the fencing details provided and that this would be suitably secured through the DCO.

- 3.6.85. The addition of pole mounted CCTV cameras up to 3.5m in height around the perimeter of the PV arrays would add to a limited degree to the incongruous appearance of the Proposed Development within the prevailing rural landscape and has been taken into account in our earlier findings on overall landscape and visual effects.
- 3.6.86. In terms of lighting, no part of the Proposed Development is proposed to be continuously lit. Motion detection lighting would be utilised for operation and security purposes within the proposed on-site substation. For the PV array areas passive infra-red systems are proposed around the perimeter of the PV array to provide night vision functionality for the CCTV. This would be appropriately secured through the Design Guidance and we are satisfied that the lighting proposals are reasonable in minimising any effects from lighting.

Landscape and visual effects during construction and decommissioning

- 3.6.87. During construction and decommissioning, the effects on landscape character would be over a relatively short-term temporary period, the construction phase being anticipated to be approximately 24 months. Adverse landscape and visual effects would be likely to arise, including from construction traffic, plant, machinery and lighting, particularly at and in proximity of the construction compounds. Works across the site would also be transient and intermittent. Reasonable mitigation and management measures are included within the outline CEMP [[REP8a-006](#)] and outline DEMP [[REP10-008](#)].
- 3.6.88. We accept the Applicant's assessment that moderate adverse effects would result from the construction phase upon the areas of the solar PV site and surroundings of the Rutland Plateau Clay Woodlands and Kesteven Uplands LCAs. We consider these effects to be significant. Decommissioning is expected to take place over a shorter period and the landscape mitigation and enhancement measures would remain in place. Taking account of the temporary period, we consider that the adverse effects on both LCAs from decommissioning would be slight adverse.
- 3.6.89. Although being short term, we agree with the Applicant's conclusions that Major-Moderate adverse visual effects would result from PRoW within or immediately bordering the site. Taking account of the short-term period we agree that other adverse visual effects during construction and decommissioning would not be significant.

Residential visual amenity

- 3.6.90. The Applicant's Residential Visual Amenity Assessment [[APP-057](#)] considers whether there is potential for visual effects to be overwhelming or overbearing such that there would be an unacceptable effect on the living conditions of the occupiers of any particular residential property. This is a different test to whether the Proposed Development would be visible or not. We agree that the 100m study area is appropriate for this purpose, taking account of the maximum height of the PV arrays and solar stations.
- 3.6.91. At North Lodge Bungalow (now known as Goose Lodge) and the apparently unoccupied North Lodge Farm we agree that moderate adverse effects (which we consider to be significant) would occur at year 1 due to, albeit filtered, views south-eastwards to solar PV arrays in Field 25. At Wood Farm Cottages on Uffington Lane, we also agree that moderate adverse visual amenity effects (which we consider to be significant) would result upon the occupiers at year 1 due principally to the open views eastward of solar PV arrays in Fields 49 and 50. In these cases, we note that these adverse effects would decrease in time once the proposed planting has matured and note the provision for additional hedgerow planting in the outline LEMP [[REP7-021](#)] that has been proposed in this respect in order to seek to minimise adverse effects. By year 15 these effects would no longer be significant.
- 3.6.92. We have also considered and, in several cases, visited properties [[EV-050](#)] that have not been considered in the RVAA as they fall outside of its 100m study area and were not included after Stage 2 consultation. In all such cases, we find that due to their distance from the solar PV site and proposed substation site, along with existing and/or proposed screening, no adverse effects would result upon the visual amenity of their occupiers to the extent that would lead to any significant or unacceptable impact on the living conditions of the occupiers. For example, PV arrays would be visible from some windows of properties at Barbers Hill, but the separation distances involved, along with existing and proposed landscaping, would ensure that no unacceptable visual effects would result.
- 3.6.93. As a further example, for properties on Carlby Road, taking account of the separation distance to the nearest PV arrays and the presence of intervening screening, no significant visual amenity effects would result upon outlook for the occupiers of these dwellings.
- 3.6.94. We consider the wider effects on residential living conditions in Section 3.13 (Interaction of effects and cumulative effects).

Cumulative effects

- 3.6.95. We are satisfied that there are no other proposed developments locally that would change our conclusion reach on landscape and visual matters. Whilst it is likely that specific works would be required to the existing substation to facilitate the connection to the Proposed Development, the Applicant and National Grid [[REP7-036](#) and [REP8-028](#)] anticipate that

these would be covered by 'permitted development' legislation. We are satisfied that they would not be likely to be of such extent or magnitude to lead to any additional significant landscape or visual effects.

Conclusion

- 3.6.96. Although not covered by any statutory protected landscape designation, the existing site and its surroundings are clearly well appreciated and enjoyed by local residents and recreational users. The Proposed Development is large in scale and extent and would result in considerable change to the existing landscape character and visual amenities of the area on a long term basis.
- 3.6.97. 2011 EN-1 recognises that national significant infrastructure projects are likely to have adverse landscape and visual effects (5.9.8 and 5.9.18). It is clear to us that the layout of the Proposed Development has taken into account and sought to minimise adverse effects, for example, the substantial setbacks from Essendine are important in protecting the character and setting of the village. We also acknowledge that there would be good degree of compartmentalisation which would result in visual effects being somewhat disaggregated over the wider area. The Applicant has also sought to reduce its visual and landscape effects through the retention of key landscape features, buffer areas from roads and PRoW and proposed planting. The planting is likely to be successful in some respects in mitigating effects, though less so where it impinges upon existing open characteristics of parts of the Order limits or obstructs existing views of the countryside from PRoW.
- 3.6.98. Where relevant, the various outline management plans, such as the outline LEMP [[REP7-021](#)], also include specific landscape and visual mitigation measures and the Design Guidance also seeks to reduce adverse effects. Generally, the mitigation measures proposed are reasonable in seeking to minimise the adverse effects, though significant residual adverse landscape and visual effects would still result as we set out earlier in this section. Whilst the effects would be reversible after decommissioning, the long operational period means that this makes no material difference to our assessment of effects.
- 3.6.99. Notwithstanding that the proposed substation would be subject to detailed design approval, that substations tend to be utilitarian in appearance, and acknowledging that full technical details are not known at this point, we consider that the application details might have gone further in terms of seeking to minimise the visual effect of this element of the proposal and to provide local authorities with additional design input and coding to help future consenting in meeting good design objectives. We also consider that greater consideration could have been given to the Design Guidance for the proposed solar stations, with little attempt to ensure that these elements are in keeping with local vernacular. Nevertheless, these detailed matters would subsequently fall for the local authorities to consider pursuant to Requirement 6 of the DCO and we are satisfied overall that these design matters are capable of being adequately resolved to minimise the adverse effects.

- 3.6.100. We also find that moderate adverse effects would result at year 1 of operation at a limited number of residential properties as described above. These adverse effects would decrease once the proposed landscaping has matured.
- 3.6.101. In all our considerations we have taken account of the proposed 60-year operational period, but given the lengthy time period, we do not find that it would significantly reduce effects in comparison to a permanent permission.
- 3.6.102. We conclude that overall, the Applicant's approach to minimise the harm, including the proposed mitigation, would be in general accordance with 2011 EN-1, along with both the 2023 draft EN-1 and 2023 draft EN-3. We go on to weigh the residual harm against the benefits of the Proposed Development in our overall planning conclusions in Chapter 5 the report.
- 3.6.103. In terms of local policy, given the resulting adverse effects, we conclude that the Proposed Development will be contrary to the relevant policies of the Development Plan, including where they seek to maintain and enhance landscape character and local distinctiveness which the Proposed Development would not achieve. In a similar vein, the Proposed Development would inevitably not accord with several design aims of the NPPF, including to add to the overall quality of the area and to be sympathetic to local character.
- 3.6.104. These matters therefore lead us to conclude overall that landscape and visual matters weigh moderately against Development Consent being granted.

3.7. LAND USE AND SOIL

Introduction

- 3.7.1. This section considers matters relating to land use and soil. In particular, the use and extent of Best and Most Versatile (BMV) agricultural land are considered, with cross referencing to Sections 3.2 and 3.11 where appropriate. Those sections relate to the principle of development and water and flood risk respectively where the use of BMV land is considered in terms of site selection and alternatives and the interaction with soils and flood risk.
- 3.7.2. Matters relating to minerals are also considered in section 3.2 of this report. We consider effects on farm businesses in Section 3.9.

Policy background

National Policy Statements

- 3.7.3. Paragraph 5.10.8 of 2011 EN-1 requires applicants to minimise impacts on BMV land defined as grades 1, 2 and 3a of the Agricultural Land Classification) and to preferably use land in areas or poorer quality except where this would be inconsistent with other sustainability objectives. Effects on soil quality should also be identified with measures to mitigate impacts.

- 3.7.4. The 2023 draft EN-1 takes forward similar principles but provides additional policies in respect of both the use of agricultural land and soils management. It requires justification for the use of BMV land and directs the SoS to take account of the economic and other benefits of that land.
- 3.7.5. Paragraph 5.11.4 of 2023 draft EN-1 acknowledges that development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process. In this context, paragraph 5.11.12 states that applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5).
- 3.7.6. Furthermore, paragraph 5.11.13 states that applicants should seek to minimise impacts on soil health and protect and improve soil quality. The preparation and implementation of a Soil Management Plan (SMP) is encouraged. The sustainable re-use of soil also needs to be considered as well as measures to protect soil during construction.
- 3.7.7. The 2023 draft EN-3 reflects the overarching approach established in 2023 draft EN-1. As outlined in Section 3.2 of this report, it states that whilst land type should not be predominating factor in determining the suitability of the site location, where possible previously developed, contaminated or industrial land should be utilised. Where the use of agricultural land is shown to be necessary, poorer quality land should be preferred, avoiding the use of BMV land where possible. However, paragraph 3.10.15 goes on to make it clear that whilst solar developments are not prohibited on BMV land, the impacts of such should be considered. It also recognises that at NSIP scale, it is likely that some agricultural land may be used.
- 3.7.8. Paragraph 3.10.18 of 2023 draft EN-3 states that the Agricultural Land Classification (ALC) is the only approved system for grading agricultural land. If necessary, field surveys should be used to establish ALC grades in accordance with the current or successor grading criteria. The identification of soil types to inform soil management in the construction, operational and decommissioning phases in line with the DEFRA Construction Code of Practice for the Sustainable Use of Soils on Construction Sites is required.
- 3.7.9. The Construction Code focusses mitigation measures on minimising damage to soil that remains in place, and minimising damage to soil being excavated and stockpiled. The measures aim to preserve soil health, soil structure, minimise soil carbon loss and maintain water infiltration and soil biodiversity.
- 3.7.10. The encouragement in 2023 draft EN-1 for the preparation of a SMP is reiterated in 2023 draft EN-3 with a further requirement that they should be in line with the ambition set in the Government's Environmental Improvement Plan to bring 60% of England's agricultural soils into

sustainable management by 2030. The SoS should ensure that the application has put forward appropriate mitigation measures to minimise impacts on soils.

- 3.7.11. Both 2023 draft EN-1 and EN-3 require the SoS to take into account the economic and other benefits of BMV land when schemes are to be located on it.

National Planning Policy Framework

- 3.7.12. In addition to the requirements outlined in the NPPF in relation to the use of agricultural land areas considered in Section 3.2 of this report, paragraph 174 also requires planning decisions to recognise the economic and other benefits of BMV land.

Development plan policies

- 3.7.13. Local development plan policies regarding land use and soil largely relate to the principle of the use of agricultural land and site selection and are therefore primarily considered in Section 3.2 of this report.
- 3.7.14. South Kesteven Local Plan Policy SP1 (Spatial Strategy) seeks to protect BMV agricultural land to protect opportunities for food production. It states that development affecting such land will only be permitted there is insufficient lower grade land available at that settlement and the land will be restored to its former use and will be of equal quality to that prior to the development.
- 3.7.15. In addition, the associated Renewable Energy Appendix contains policies related to soil surveys. Solar Energy Criterion 9 of the Appendix requires the applicant to provide the ALC for the site, including whether Grade 3 land is either Grade 3A or 3B. It says that as there is no national mapping of these sub-divisions, a site survey using trail holes/augers will be required from a qualified expert.

Applicant's approach

- 3.7.16. Chapter 12 (Land Use and Soils) of the ES [[APP-042](#)] provides an assessment of the potential impacts on agricultural land, soils and agricultural businesses. It is supported by a number of appendices including, Appendix 12.4 (Agricultural Land Classification Survey) [[APP-091](#)].
- 3.7.17. The ALC survey was undertaken by a soil scientist. A "semi-detailed" survey was undertaken in December 2021 with 217 auger bore locations on a 200m by 200m grid. Following pre-application feedback from Natural England [[APP-090](#)], sampling at an additional 117 auger bores was carried out at a higher density in across parts of the Order limits to determine the boundaries of BMV land with more accuracy. Four soil pits were excavated to examine soil properties such as stone content in more detail. A sample of topsoil was collected at 11 auger bore locations and analysed to determine the texture class of topsoil. The Auger Point Plan provided to the rear of the ALC Survey [[APP-091](#)] identifies the location of sampling undertaken.

3.7.18. An outline SMP [[APP-213](#)] was also submitted with the application and subject to several revisions during the course of the Examination, in response to matters raised, with a final version being submitted at Deadline 8a [[REP8a-004](#)].

Baseline conditions

3.7.19. The baseline conditions for agricultural land quality, soil structure and land-based businesses are summarised in section 12.2 of the ES.

3.7.20. The ALC results for the Order limits as a whole, as well as the solar PV arrays areas and field margins, are set out in Table 12-1 of Chapter 12 of the ES. The table identifies that 42.2% of the Order limits as a whole and 40.7% of the PV array area is classified as BMV land.

3.7.21. In response to a RR from Natural England [[RR-0823](#)] requesting further details of the survey results for each element of the Proposed Development, the Applicant provided an updated table in Annex A to its response to RRs at Procedural Deadline A [[PDA-012](#)]. This provided ALC results for the area for biodiversity and arable land as well as the area affected by the substation and fixed equipment. ALC grades were not provided for the entirety of the Mitigation and Enhancement area as some of this land is included within the PV array areas. The results are replicated below for convenience.

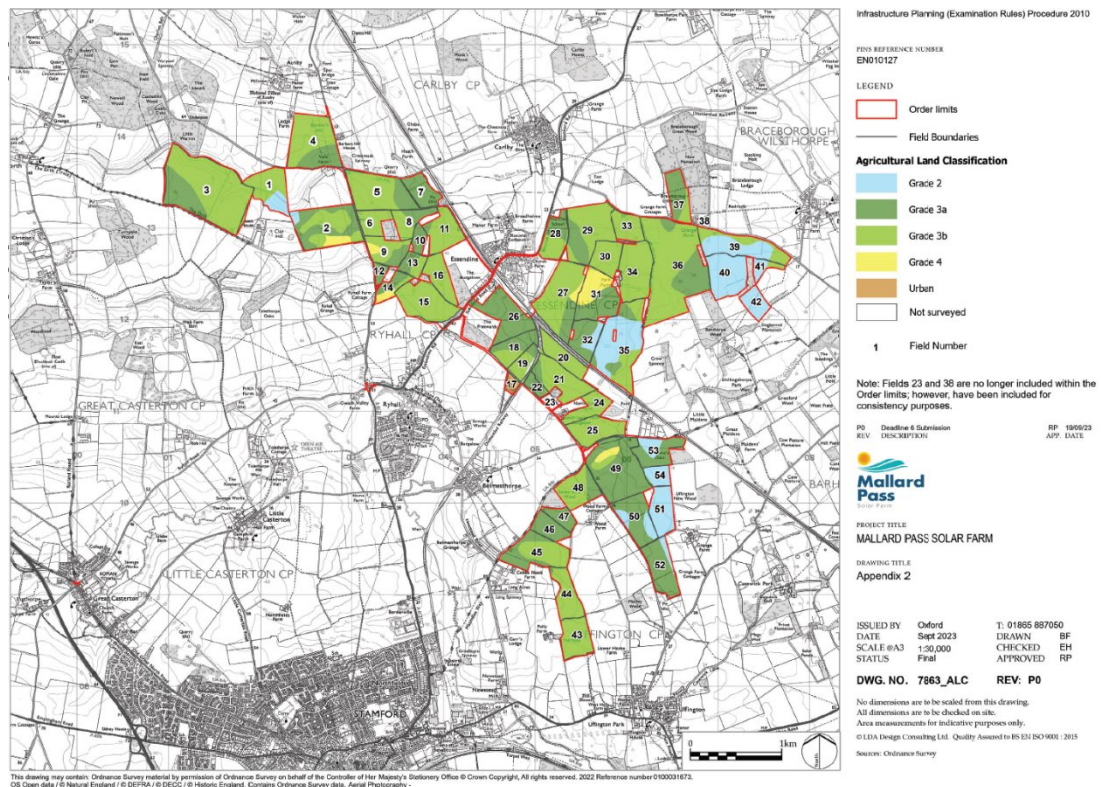
Table 1: Applicant's ALC results for the Order limits and the solar PV site area [[PDA-012](#)]

ALC	Order limits		Solar PV Site and field margins		Area for biodiversity and arable	Area affected by substation and fixed equipment
	Area (Ha)	Area (% of total site)	Area (Ha)	Area (% of Solar PV site)	Area (Ha)	Area (Ha)
Grade 1	0	0%	0	0%	0	0
Grade 2	100	11.7%	35	6.6%	65	0.5
Grade 3a	260	30.5%	181	34.1%	79	3.7
Grade 3b	439	51.5%	297	55.9%	142	9.9
Grade 4	18	2.1%	18	3.4%	0	0.3
Grade 5	0	0%	0	0%	0	0

ALC	Order limits		Solar PV Site and field margins		Area for biodiversity and arable	Area affected by substation and fixed equipment
Non-agricultural	0	0%	0	0%	0	0
Urban	3	0.4%	0	0%	-	3
No survey	32	3.8%	0	0%	-	0
Total	852	100%	531	100%	286	17.4

3.7.22. The grading of agricultural land across the entirety of the Order limits is illustrated in Figure 12.1 of the ES [APP-201]. Figure 12.2 provided to the rear of the ALC Survey [page 83 of APP-091] illustrates ALC grading within the PV array areas and associated field margins. A plan illustrating the Applicant's ALC survey result across the Order limits along with field numbers was provided at Deadline 6 [REP6-004a] and is copied below.

Figure 4: ALC survey results and field numbers across the Order limits



3.7.23. Table 12-3 in Chapter 12 of the ES [APP-042] provides a comparison with estimated areas and proportions of ALC gradings for England, Lincolnshire and Rutland drawing on data from Natural England. Analysis provided by the Applicant indicates the following:

- 42% of agricultural land in England is of BMV quality
- In Lincolnshire the proportion of BMV rises to 71.2%
- In Rutland, the proportion of BMV land is 45.2%

3.7.24. Insert 12.4 of Chapter 12 of the ES provides an extract of Natural England's predictive BMV mapping from 2017. The Applicant explains that this shows the Order limits as lying within an area shown as the lowest probability of BMV land with much of the surrounding area shown as being of moderate or high probability of BMV quality.

3.7.25. Turning to soil structure and integrity, the ES determines that on the basis of the soil surveys, the soils within the solar PV array area and Mitigation and Enhancement Areas are predominately developed over limestone and are variable in terms of soil depth and wetness. Soils identified range from well drained and permeable to wet and clayey soils that are often waterlogged. In terms of sensitivity of soils to structural damage from being moved or handled, all soils across the Order limits are assessed as being of medium sensitivity.

Embedded mitigation

3.7.26. Section 12.3 of the ES [[APP-042](#)] explains that the ALC survey influenced the layout of the Proposed Development with the removal of all fields that consisted entirely of Grade 2 from the PV array area. Solar stations are intended to be located on poorer quality areas as far as practicable with existing access tracks being used on a similar basis. The exact location would be determined at the detailed design stage.

3.7.27. The final outline SMP [[REP8a-004](#)] as secured by Requirement 14 of the draft DCO, provides measures to retain and restore soil quality across the construction and operational phases with an outline for decommissioning. This includes provisions to avoid trafficking or handling soils when wet and restoring soils in trenches in the same order that they came out. Measures are also reflected in the outline CEMP, OEMP and DEMP.

Summary of effects

3.7.28. Table 12-14 of the ES [[APP-042](#)] presents the Applicant's Summary of Effects. A moderate (significant) effect from the permanent sealing or down grading of agricultural land originally identified during the construction phase was subsequently reduced to non-significant.

3.7.29. The Applicant clarified in response to ExQ2 7.0.8 [[REP5-012](#)] that this change followed updates to the outline SMP to address Natural England's WR [[REP2-093](#)] requiring measures to ensure the restoration of all areas back to their current ALC grade. The ES had assessed 14.4ha of agricultural land (tracks, solar stations and the onsite substation) as being permanently lost. Effects on PV arrays areas were considered to be temporary from the outset as SMP made provisions for the land to be restored.

- 3.7.30. The ES findings and residual effects are therefore as follows:
- During construction, all residual effects relating to the sealing or downgrading of agricultural land, significant damage to soil (slight) and adverse effects on farm businesses (negligible/slight) are assessed as being non-significant.
 - During operation, all residual effects relating to the sealing or downgrading of agricultural land, significant damage to soil (neutral/slight) and adverse effects on farm businesses (slight) are assessed as being non-significant.
 - During decommissioning, residual effects relating to damage to soils are deemed to be slight (non-significant).

Issues arising during the Examination

Local Impact Reports

- 3.7.31. RCC's LIR [[REP2-048](#)] considered that the loss of a significant amount of agricultural land would have a negative impact. As the application as made did not seek a time limit to the operational phase, the LIR called for the assessment of the loss of agricultural land on a permanent basis. It also requested the consideration of the cumulative impact of the loss of agricultural land with the Proposed Development and with other schemes across the wider region.
- 3.7.32. In addition, RCC stated that the Applicant's ES had focussed on the difference in loss of agricultural production between BMV and non-BMV agricultural land rather than assessing the overall impact of the loss of food production that should be considered in relation to food security. Where no longer required, for instance due to advances in solar technology efficiency, RCC called for land to be returned to agricultural use or biodiversity enhancements.
- 3.7.33. LCC's LIR [[REP2-044](#)] concluded that the Proposed Development would have a significant negative impact locally and in combination with other NSIP scale solar projects proposed in Lincolnshire.
- 3.7.34. LCC identified around 18 agricultural fields within the Order limits that lie within the county and which comprise largely of grades 3a and 3b. Some Grade 2 land was also identified within Lincolnshire. Of the 18 fields, 8 are fully or partially within the PV array area.
- 3.7.35. LCC acknowledged that fields that were predominantly Grade 2 had been removed and that it is stated that sheep farming could take place in the PV arrays areas. However, the impacts on the BMV remaining were of concern in terms of the loss of arable food production with related impacts on related businesses, food security and climate change if food imports increased as a result. These impacts were considered to be greater by LCC as the DCO was not time limited. As such, LCC stated that the loss of agricultural land should be considered as permanent and not reversible.
- 3.7.36. SKDC's LIR [[REP2-051](#)] identified a significant negative impact on arable food production with a substantial amount of BMV land within the Order

limits and the District. Indeed, the LIR states that all the Grade 2 land identified is located within South Kesteven. In addition, agriculture and related food processing and distribution are cited as being a major source of employment in the area. Concerns regarding food security and the carbon impacts on the need to increase food imports were also cited.

- 3.7.37. As with LCC, the cumulative impact of the Proposed Development with other solar projects is highlighted as well as in isolation. The LIR states that in the absence of measures to secure the replacement or mitigation of the loss of agricultural land, there is potential for a permanent loss. The scope for sheep grazing is acknowledged but clarity is sought on how it would be secured.

Position of the Local Authorities at the end of the Examination

- 3.7.38. The impacts identified regarding the use of agricultural land remained as a concern for all three local authorities at the close of the Examination as evidenced in SoCGs [[REP9-020](#), [REP9-021](#), [REP9-022](#)], and Closing Summary Statements [[REP10-014](#), [REP10-020](#)].

Natural England

- 3.7.39. Natural England identified several agricultural land and soils matters that needed to be addressed by the Applicant both prior to, and during, the course of the Examination. However, by the end of the Examination, agreement had been reached with the Applicant. As set out in its final SoCG [[REP9-019](#)], Natural England confirmed that it had no outstanding concerns regarding the Applicant's ALC survey and that the cumulative assessment in relation to the use of BMV land and measures to manage and restore soil quality as set out in the outline SMP and DEMP are appropriate.

Soil surveys and extent of BMV land

- 3.7.40. The level of detail in terms of soil sample density had been initially identified as an issue by Natural England at the pre-application stage. It advised the Applicant that additional soil survey work would be required in all areas identified as BMV and all areas permanently lost. The Applicant subsequently undertook additional surveys "across the majority, but not all, of these areas" as identified in the ALC Survey.
- 3.7.41. Natural England's draft SoCG [[REP7-028](#)] noted that whilst the Applicant had not fully taken account of this advice, it accepted the Applicant's approach on the basis that the area of permanent infrastructure had been assessed in more detail. However, following a further review by Natural England, it determined that as the precise location of the onsite substation was subject to change at the detailed design stage, an update to the outline SMP was necessary to secure further auger samples prior to construction to inform the detailed SMP and site restoration [[REP8-029](#)]. This is reflected in section 10 of the outline SMP [[REP8a-004](#)].
- 3.7.42. WRs from MPAG [[REP2-090](#)] and Greatford Parish Council [[REP2-061](#)] called for a more detailed ALC survey across the Order limits highlighting

conflict with Natural England's Technical Information Note 49 (TIN049) as well as with Natural England's pre-application advice, inconsistencies in the Applicant's soil surveys and conclusions on the amount of BMV land. The matter was discussed at ISH4 [REP7-036] where the Applicant stated that although a sampling undertaken on a 100m basis had developed over time as good practice, this was not prescribed in the guidance. It also reiterated its position that as the soil would be restored to its current quality, effects would not be permanent.

- 3.7.43. During the Examination, MPAG commissioned a soil consultant to undertake further soil surveys within the Order limits. A review of the Applicant's soil surveys and conclusions was also undertaken. The report was subsequently submitted at Deadline 7 [REP7-060] and discussed in MPAG's summary of oral representations at ISH4 [REP7-057].
- 3.7.44. MPAG's report was informed by additional soil testing in Fields 2 and 3 within the Order limits. Amongst the conclusions of the report is an indication that there is a larger area of Grade 2 agricultural land within Field 2 than that identified by the Applicant. Conversely, it considered that the amount of Grade 3b and Grade 4 land within Field 2 may have been over-estimated by the Applicant. The report also states if MPAG's own survey results "*...were extrapolated, it is likely that there is more than 50% BMV on the site, overall*".
- 3.7.45. A lack of soil pits assessed by the Applicant within Field 2 is also cited as a concern by MPAG along with call for a more detailed assessment across the Order limits. Furthermore, the MPAG report provided an analysis of the reduction in BMV land identified by the Applicant between initial ALC surveys undertaken in support of the Preliminary Environmental Impact Report (PEIR) and Stage 2 ALC surveys which it was claimed were not substantiated by the survey results reported in the ES. The MPAG report also highlighted limitations identified by a peer review of the Applicant's PEIR undertaken on behalf of RCC and SKDC. Nevertheless, it does acknowledge that "*our findings across the site broadly indicate that the KCC (Applicant's) report is correct in that it presents the ALC grades in accordance with the guidelines*".
- 3.7.46. In response to our request for comments on MPAG's report, Natural England [REP8-029] stated that it was inappropriate to draw the conclusion that "*the land remains mostly BMV quality, with around 50% of the site Grade 3a and a small quantity of Grade 2*" due to the limited nature of the MPAG survey. Natural England confirmed that although it considered that with measures in the SMP, soils would be safeguarded, it did acknowledge the downgrading of some agricultural land by the Applicant as highlighted by MPAG needed explanation.
- 3.7.47. RCC [REP8-025], LCC [REP8-024] and SKDC [REP8-026] did not offer comments on the technical matters relating to the extent of soil surveys but reiterated their concerns regarding the extent of the loss of BMV land.

- 3.7.48. The Applicant provided a response to the issues raised in MPAG's report at Deadline 8 [[REP8-019](#)]. This specified that there is no sampling density set out in the ALC of England and Wales: revised guidelines and criteria for grading the quality of agricultural land (MAFF, October 1988), which is the methodology used for ALC. Whilst TIN049 refers to a "frequency of one boring per hectare for a detailed assessment", the Applicant's position is that not every survey needs to be detailed. It also states that the level of detail of a survey can reflect circumstances where the ALC grading would not be lost or downgraded as is the Applicant's and Natural England's conclusion, subject to mitigation.
- 3.7.49. The Applicant also provided an explanation of the boundary changes for BMV land between the different surveys as requested by Natural England and MPAG. Changes were made to address several issues including alignment with field boundaries, field walk overs findings and additional surveying. It also stated that there was no factual basis for the MPAG report to extrapolate its soils survey finding across the Order limits to suggest a higher proportion of BMV land. The Applicant concludes by stating that even if MPAG's suggestion of a higher level of BMV land were accepted, as there is no impact on the quality of soil, any potential alterations to the proportion of BMV land would not affect the protection of BMV as a resource.
- 3.7.50. MPAG's subsequent response provided in Appendix 1 of its Deadline 9 submissions [[REP9-037](#)] continued to challenge the Applicant's stance.
- 3.7.51. Having considered the respective submissions on this matter, we are satisfied that the Applicant's soil surveys are sufficiently detailed. The commitments for more detailed surveys in advance of the construction of the substation as secured by the outline SMP pursuant to Requirement 14 of the draft DCO are noted as well as the final position of Natural England on the matter. On this basis, we accept the Applicant's conclusions in relation to the amount of BMV land present across the Order limits and we consider the ALC survey to fulfil the requirements of 2023 draft EN-3 as well as the South Kesteven Local Plan.
- 3.7.52. We do not consider it appropriate to extrapolate MPAG soils survey findings across the entirety of the Order limits and attach little weight to the speculative conclusion that it is likely that more than 50% of the Order limits is BMV.
- 3.7.53. Further discussion regarding the potential need for soil surveys beyond the Order limits is provided in Section 3.2 of this report.

Soil management and mitigation measures

- 3.7.54. Matters relating to soil management, including compaction, the establishment of grassland and other measures to maintain or restore soil quality were subject to discussion throughout the Examination. In part, this was due to inter-relationship between soils and flood risk. Accordingly, soils management issues are considered here with cross referencing with Section 3.11 as appropriate.

- 3.7.55. The risk of soil compaction arising from disturbance and trafficking during construction and decommissioning was identified as a concern by IPs including MPAG [REP2-090], Greatford Parish Council [REP2-061] and Mr Granville-White [REP2-159]. Effects from maintenance activities and sheep grazing were also highlighted by IPs. It was considered that the risk was particularly an issue when the soil would be wet and given the extent of clay soils within the Order limits. It was argued that soil compaction would have implications for surface water as well as soil health and quality, even in the long term. MPAG expressed concern that taking soil out of agricultural production for a long period would also be detrimental to soil fertility.
- 3.7.56. IPs also identified apparent deficiencies in the outline SMP. These included the absence of specified soil metrics to determine the appropriate level of safe soil water content to guide when it would be appropriate to handle or traffic soils.
- 3.7.57. The extent to which grassland underneath the PV arrays would be sowed and established in advance of construction was also considered, including at ISH4. MPAG [REP7-057] considered that compaction and the high nutrient value of the arable farmland would constrain grassland establishment.
- 3.7.58. The establishment of grassland is considered as central to the effective management of soils and surface water by MPAG and Greatford Parish Council. MPAG sought advance sowing 12 to 18 months in advance of construction to enable the establishment of the root system and also questioned the suitability of the seed mix proposed [REP7-057]. The outline LEMP refers to the sowing of an *"appropriate mix, such as Emorsgate Basic General Purpose Meadow Mixture EM1at 4g/m²"* under the PV arrays.
- 3.7.59. Towards the close of the Examination, MPAG also submitted a report commissioned by the Welsh Government entitled "The impact of solar photovoltaic (PV) sites on agricultural soils and land" [REP9-037]. The report identifies that the main impact arising from the construction, operational and decommissioning phases of solar farms is deep soil compaction which can result in the loss of BMV land. It states that such compaction mainly arises from trafficking and can take many years to recover from the compaction, if ever.
- 3.7.60. The report also explains that the potential impact of the extraction of piles during decommissioning in terms of soil disturbance and quality is also identified including from corrosion and fracture of the piles. However, it is acknowledged that *"At this stage in the life of the ground-mounted solar PV industry, the impact of pile pull-out on agricultural land and soil is a 'grey' area with few conclusions having been drawn to date"*. It also highlights the benefits of grassland in terms of topsoil carbon capture as well as soil structure. A quality soil management plan is considered to be essential to enable the restoration of land to agriculture.

- 3.7.61. Natural England's WR [\[REP2-093\]](#) identified issues in need of attention, including the need to commit to restore soil quality across all of the Order limits (including tracks and infrastructure) applying the current ALC grades or equivalent at the time of restoration, recognising that the system for grading land may have changed by that point. It also called for additional measures to be included in the SMP for monitoring and maintenance of grasslands underneath the PV arrays and mitigation to address the situation where the grass sward had not been established.
- 3.7.62. In response to concerns identified by IPs regarding soil quality and restoration, the Applicant provided updates to the outline SMP [\[REP8a-004\]](#). An SMP that must be substantially in accordance with the outline SMP is secured by Requirement 14. Additional measures specified by the close of the Examination include:
- The provision of a good practice guide for handling soils as Appendix B to the outline SMP with measures to consider soil wetness and compaction;
 - Engagement of a soil surveyor to advise whether and when soils are suitable for construction to begin and when construction may need to be curtailed in the autumn due to suitable ground conditions;
 - Storage of soils in designated areas to avoid trafficking;
 - A programme of soil health monitoring during the operational phase as specified in the outline OEMP with further information to be provided in the detailed OEMP;
 - Post-restoration surveys to be undertaken across all land reinstated to determine if it has been successful with a programme of aftercare to ensure that the soils characteristics meet the required standard;
 - Monitoring of land in the PV arrays areas where rutting may occur from cleaning or maintenance vehicles to address compaction; and
 - The reinstatement of topsoil to be informed by ALC survey results and to ensure that it is restored to the same land quality as the land immediately next to the area affected, as measured by the ALC Revised Guidelines and Criteria (1988) or by any subsequent ALC methodology in force at decommissioning.
- 3.7.63. To seek address the issue of grasslands, the Applicant prepared a Grassland Establishment Management Plan (GEMP) which forms Appendix 3 to the outline LEMP [\[REP7-021\]](#). The detailed LEMP is secured by Requirement 7 of the DCO [\[REP9-005\]](#) which must be substantially in accordance with the outline LEMP. However, Requirement 7 does not include a specific reference to the GEMP or the establishment of grassland more generally.
- 3.7.64. The GEMP provides outline details for the advance sowing of grassland prior to the installation of PV arrays, seeding post-installation, reseeding and repairs, details of the seed mix and ecological management and management at decommissioning.

- 3.7.65. In relation to advance sowing of grasslands, the GEMP elaborates on the outline LEMP's aim of sowing grassland in advance so far as possible. It states that where the solar PV array is scheduled to take place the following spring, the grass should be sown in the preceding autumn. As such, sowing would take place approximately six months in advance of works in that scenario. The GEMP also includes details for post installation sowing where works in advance are not possible.
- 3.7.66. The final outline LEMP and accompanying GEMP also commit to low intensity grazing on a rotational basis, should sheep farming take place, that would help to avoid issues with soil compaction and enable grasslands to establish. When grazing does not occur, the grassland underneath the PV arrays would be cut twice a year. Bi-annual monitoring of establishment grassland is a further commitment in the outline LEMP and GEMP.
- 3.7.67. In response to feedback on the GEMP from Greatford Parish Council [[REP8-023](#)] and the ExA's request for further information [[REP9-027](#)], the Applicant provided further clarification on the circumstances when advance sowing would not be possible stating that grasses are normally sown in the autumn or spring so that they have adequate moisture to establish sufficiently.
- 3.7.68. The Applicant also points to the potential benefits of converting arable land to grasslands, including carbon sequestration as discussed in Chapter 12 of the ES [[APP-042](#)]. It notes that this benefit has been recognised in the determination of other solar PV projects, including in the Longfield DCO decision [[REP10-013](#)]. We acknowledge that there is a benefit in this regard.
- 3.7.69. In response to issues raised in the Welsh Government report regarding impacts on soil from the removal of piles from solar farms, the Applicant updated the outline OEMP [[REP10-006](#)] at Deadline 10 to state that details would be provided to SKDC and RCC alongside the annual maintenance schedule to ensure that no new or materially different effects to soil would arise from the removal of piles during maintenance. The outline DEMP [[REP10-008](#)] was also updated to include a commitment for the detailed DEMP and associated SMP to provide a detailed methodology for the removal of piles. The Design Guidance (PL3.12) as specified in the Design and Access Statement [[REP5-058](#)] also requires mounting structures to be anodised aluminium alloy or galvanised steel which is intended to minimise corrosion and increase their lifespan.
- 3.7.70. It is also noted by the ExA that whilst the Welsh Government report provides evidence relating to the effects of solar farms, it does not specify policy for NSIPs.
- 3.7.71. Potential contamination from cleaning agents used on PV panels as identified by MPAG's WR [[REP2-090](#)] and the CPRE at ISH4 [[REP7-036](#)] were addressed by the Applicant with measures in the outline SMP, OEMP and LEMP.

- 3.7.72. As highlighted above and in Natural England's SoCG [[REP9-019](#)], by the close of the Examination, it was satisfied with the Applicant's soil resource safeguarding and restoration plans.
- 3.7.73. With the mitigation proposed in the outline SMP as secured by Requirement 14 of the draft DCO [[REP9-005](#)], we are satisfied that there would not be any permanent loss or down grading of agricultural land or soil quality. The compaction of soil would also be avoided or addressed should it occur. Nevertheless, it would be critical for the RCC and SKDC to closely scrutinise the SMP under the provisions of Requirement 14 at the detailed design stage to ensure that it suitably addresses matters at that time.
- 3.7.74. In relation to grasslands, the ExA is satisfied that the outline SMP and LEMP, with the introduction of the GEMP, provide adequate provision for establishment as far as possible in advance of construction as well as for post-installation sowing and ongoing maintenance. This would be a critical element of soil and surface water management. We therefore recommend that Requirement 7 regarding the LEMP is amended to include reference to the GEMP and grassland establishment. This is considered further in Chapter 7 of this report.

Impact of use of agricultural land

- 3.7.75. As identified in Table 12-1 of the ES [[APP-042](#)], 360ha of the Order limits as a whole is classified as BMV land with a ALC as follows:
- Grade 2 - 100ha
 - Grade 3a - 260ha
- 3.7.76. Of this BMV land, a total of 216ha falls within the PV array areas and field margin:
- Grade 2 - 35ha
 - Grade 3a - 181ha
- 3.7.77. We also note that non-BMV land within the site is also used for agricultural purposes. A further 439ha of Grade 3b and 18ha Grade 4 land is identified in Table 12-1 across the Order limits. A total of 315ha of non-BMV land lies within the PV array and field margin area with 297ha Grade 3b and 18ha of Grade 4.
- 3.7.78. The loss of this resource was a significant issue of concern for IPs, including RCC [[REP2-048](#)], LCC [[REP2-044](#)], SKDC [[REP2-051](#)], MPAG [[REP2-090](#)] and the Solar Campaign Alliance [[REP2-098](#)] in terms of food production and security as well as impacts on related businesses.
- 3.7.79. Whilst the Applicant makes the case that food production is an economic and land use consideration rather than an environmental one, Chapter 12 of the ES [[APP-042](#)] does provide some analysis on the issue given concerns raised by parties on the issue during the pre-application stage. It caveats the commentary by making it clear that the way in which the land is farmed is the choice of the landowner with additional external influences such as economic and climate conditions. In addition, it states

that there is no policy for increasing UK food production from arable crops, pointing to the Government's Food Strategy (Secretary of State for Environment, Food and Rural Affairs, June 2022) which states at paragraph 1.2.3 that "*our aim is that farmers will broadly maintain domestic production at current levels as we deliver our climate and environmental goals*".

- 3.7.80. The ES acknowledges that the continuation of arable farming would not be possible within the PV arrays areas and field margins (531ha). Land within the Enhancement and Mitigation Area (approximately 239ha) would continue to be available for arable production along with the skylark plots discussed in Section 3.4 of this report.
- 3.7.81. Table 12-10 of the ES provides an estimate of potential production that would be lost in the PV array and field margin area based on a three-year crop rotation and average yields for wheat (3,020t), barley (660t) and oilseed rape (310t), indicating a total production of 4,000t.
- 3.7.82. Whilst the Applicant explains that it is not aware of research that identifies yield differences between BMV and non-BMV land, Table 12-11 of the ES estimates the potential increased production of these crops applying increased yields on the 216ha of BMV land within the PV array and field margin area as follows; wheat (202t), barley (34t), oilseed rape (18t). Thus, a total additional 254 tonnes of production is estimated on BMV land.
- 3.7.83. The Applicant clarifies in its Closing Summary Statement that the effect of moving the PV arrays to non-BMV land in the vicinity would be a related increase in production i.e. approximately 254 tonnes. This is deemed by the Applicant to be negligible in the context of approximately 21 million tonnes of cereal production in the UK in 2022 as referenced in paragraph 12.4.76 of the ES.
- 3.7.84. Notwithstanding the potential effects on arable production, the ES indicates that large areas of the PV array area would continue to support agriculture and would be farmed by way of sheep farming or fodder production. The PV arrays are cited as being of sufficient height to allow sheep to move freely underneath the panels and the Applicant highlights other solar farms where sheep grazing is undertaken.
- 3.7.85. The feasibility of sheep farming within the Proposed Development and the extent to which it would be secured was subject to consideration during the course of the Examination. At ISH4 [[REP7-036](#)], the Applicant confirmed that the scope for sheep farming should be considered as a benefit rather than a mitigation measure. Whilst measures in the outline LEMP [[REP7-021](#)] would enable a sheep farming operation to occur in the event of market interest, the activity is not secured. Accordingly, the ExA affords this potential benefit little weight.
- 3.7.86. In addition, Chapter 12 and Appendix 12.6 [[APP-093](#)] of the ES explains that the four farm businesses within the Order limits would continue to be viable with considerable areas of land beyond the PV array areas. This

includes the Enhancement and Mitigation Areas within the Order limits and land beyond the Order limits. Chapter 14 of the ES [[APP-044](#)] identifies that 17.4% of the total combined area of the four farms lies within the Order limits as a whole. As such, the economic effect of the use of BMV land is not considered to be significant. Whilst there would inevitably be some loss of production for individual farms due to the removal land from production, the majority of the farmland would still be capable of arable cultivation.

- 3.7.87. Chapter 12 of the ES states that as food production is not an environmental consideration, the cumulative effects are not assessed. However, in response ExQ1 7.0.11 [[PD-008](#)] and WRs calling for such an assessment, including from RCC [[REP2-047](#)], LCC [[REP2-046](#)], SKDC [[REP2-053](#)] the Solar Campaign Alliance [[REP2-098](#)] and MPAG [[REP2-090](#)], the Applicant provided further details.
- 3.7.88. The cumulative agricultural land appraisal submitted by the Applicant at Deadline 3 [Appendix I of [REP3-037](#)] considers the possible effects of other solar projects across Lincolnshire and Rutland. Based on available information and assumptions made by the Applicant, it is estimated that the projects, including the Proposed Development, include approximately 2,114ha of BMV land. This would represent around 0.5% of the BMV land across Lincolnshire and Rutland. Around 42ha of BMV land is estimated across the projects to be occupied by fixed equipment such as tracks and substations. The appraisal concludes that individually and cumulatively, there would be no significant effects or loss of BMV agricultural land.
- 3.7.89. At Deadline 9 the Applicant provided a final update to the list of cumulative sites to be considered [[REP9-025](#)]. Whilst BMV data was not available for two additional sites, applying similar assumptions to the Proposed Development, the Applicant concluded that the overall conclusions regarding cumulative effects would remain the same. Cumulative effects are considered further in Section 3.12 of this report.
- 3.7.90. We conclude on this matter that the Applicant has satisfactorily considered the impact of the use of BMV land as well as the agricultural land resource as a whole. ALC field surveys were undertaken to establish grade in accordance with 2023 draft EN-3 and the South Kesteven Local Plan. The Proposed Development also allows for continued agricultural use as encouraged by the 2023 draft EN-3 in the form of arable farming within the Enhancement and Mitigation Areas, and the potential for sheep farming within the PV array areas.
- 3.7.91. We also note that the overall impact of the Proposed Development in relation to food production in the national context is negligible. In isolation, and in-combination with other NSIP projects considered, the BMV land resource would not be significantly affected and there is no compelling evidence that UK food security would be undermined.
- 3.7.92. Nevertheless, there is a corresponding degree of conflict with the Government's Food Strategy aim of broadly maintaining domestic production at current levels. There is a potential higher agricultural yield

and associated economic benefit from the farming of BMV land that would be lost but this is not significant.

3.7.93. There is also some conflict with South Kesteven Local Plan Policy SP1 (Spatial Strategy) which states that proposals should "...*protect opportunities for food production and the continuance of the agricultural economy*". Whilst the soil would be maintained or restored to its original quality at decommissioning, the land with the PV array and field margin area would be taken out of arable food production for a period of 60-years which is a considerable period of time.

3.7.94. The ExA considers that this weighs against the Proposed Development. However, given that the soil quality would be restored to the same quality at decommissioning (as set out in the outline SMP), the harm is not permanent, albeit it would be long term, and we therefore given little weight in the planning balance.

Implications of the 60-year time limit

3.7.95. The Applicant's Statement on 60-Year Time Limit [[REP7-038](#)] explains that Chapter 12 of the ES assessed the effects on agricultural land and soils on the basis that the Proposed Development would be decommissioned with the land returned to the same quality as it is now. This approach was taken prior to the proposed time limit of 60-years for the operational phase.

3.7.96. The Applicant concludes that given the approach taken, the 60-year time limit does not alter the conclusions of Chapter 12 of the ES.

3.7.97. In response, MPAG [[REP8-030](#)] identified concerns regarding soil compaction associated with maintenance vehicles and works as being a concern as well as the loss of food production over the 60-year period.

3.7.98. The ExA concurs with the Applicant's conclusion and acknowledges the introduction of an operational time limit which, whilst being long term, provides greater certainty over the point of decommissioning and the period of time over which the effects considered above would be experienced.

Conclusion

3.7.99. As detailed above, the ExA is satisfied that the Applicant has provided a suitable assessment of ALC classification within the Order limits in line with 2023 draft EN-3 as well as the South Kesteven Local Plan.

3.7.100. Furthermore, with the measures set out in the outline SMP, as secured by Requirement 14 of the DCO [[REP9-005](#)], we are satisfied that there would not be any permanent, albeit it would be long term, or down grading of agricultural land or soil quality. Matters relating to avoiding and mitigating soil compaction, should it occur, as well as for the establishment of grassland in the PV array areas are also considered by the ExA to be appropriate.

- 3.7.101. This aligns with 2011 EN-1 in terms of the need to mitigate impacts on soil quality as well as 2023 draft EN-1 which requires applicants to minimise impacts on BMV land. The provision of an SMP is encouraged by 2023 draft EN-1 and EN-3 to minimise impacts on soil health and quality. This includes proposals for the sustainable re-use of soil re-use and to protect soil during construction and so we find general compliance with the 2023 draft EN-1 and EN-3 in this regard.
- 3.7.102. In line with 2023 draft EN-1, EN-3 and the NPPF, the SoS should take account of the economic and other benefits of BMV land. In this regard, there would be harm related to the loss of agricultural production over the operational period. There is also limited conflict with South Kesteven Local Plan Policy SP1 (Spatial Strategy) which states that proposals should "...protect opportunities for food production and the continuance of the agricultural economy".
- 3.7.103. However, the soil quality would be maintained or restored to an equivalent quality and the effects in terms of a loss of food production in isolation or in combination with other potential solar projects in Lincolnshire and Rutland, are not significant. The Proposed Development also allows for continued agricultural use as encouraged by the 2023 draft EN-3 in the form of arable farming within the Enhancement and Mitigation Areas, and the potential for sheep farming within the PV array areas. Accordingly, we consider this harm to carry little weight in the planning balance.

3.8. NOISE AND VIBRATION

Introduction

- 3.8.1. This section considers the effects of the Proposed Development in relation to noise and vibration. Any issues from noise and vibration relating to ecology and biodiversity are considered separately in section 3.4 of this chapter.
- 3.8.2. Although located within a rural area, the proximity of the Order limits to residential properties and the use of footpaths and roads for recreational activity has led to particular concerns being raised, particularly with regard to potential noise impacts from the Proposed Development during construction and operation.

Policy background

- 3.8.3. The 2011 EN-1 and 2023 draft EN-1 contain general policy on the assessment of noise. The 2023 draft EN-3 contains policy that is specific to solar photovoltaic generation, most particularly in relation to noise and vibration effects during construction.
- 3.8.4. Both 2011 EN-1 (5.11.9) and 2023 draft EN-1 (5.12.17) state that development consent should not be granted unless the following aims are met, through effective management and control of noise:

- Avoid significant adverse impacts on health and quality of life from noise.
- Mitigate and minimise other adverse impacts on health and quality of life from noise.
- Where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

- 3.8.5. The 2011 EN-1 and draft 2023 EN-1 are similar in requiring that operational noise, with respect to human receptors should be assessed using the principles of the relevant British Standards and other guidance.
- 3.8.6. Both 2011 EN-1 and 2023 draft EN-1 (5.12.15) also require that proposals demonstrate good design including through selection of the quietest or most acceptable cost-effective plant available, containment of noise within buildings wherever possible and the use of landscaping, bunds or noise barriers to reduce noise transmission where possible.
- 3.8.7. The NPPF and PPG provide further policy and guidance on noise in planning which we have had regard to in considering this issue.
- 3.8.8. Policy EN4 of the SKDC Local Plan includes the overall aim of minimising pollution, including through the preventing significant effects, including from noise, and by requiring potential adverse effects to be mitigated to an acceptable level. Criterion 5 of the South Kesteven Renewable Energy Appendix requires solar farm proposals to be strategically sited to minimise noise effects, to operate with minimal noise output and to include mitigation measures to prevent adverse noise impacts.
- 3.8.9. Policies CS19 of the RCC Core Strategy and SP15 of its Site Allocations Plan include the aims to avoid unacceptable noise impacts and protect the amenity of the wider environment from disturbance.

Applicant's approach

- 3.8.10. Chapter 10 of the ES [[APP-40](#)] presents the Applicant's assessment of the potential impacts of noise and vibration from the Proposed Development on sensitive receptors.
- 3.8.11. Key construction activities leading to worst case noise levels would arise from earthworks, solar array mounts (percussive piling), onsite substation construction, grid connection cable trench work and temporary site compound construction (Table 10-2 of the ES [[APP-040](#)]). Construction activities such as piling, drilling, vibratory rolling techniques and Horizontal Directional Drilling (HDD) would have potential for effects from vibration.
- 3.8.12. During operation, it identifies the main potential source of noise to be associated with electrical and mechanical plant, including the equipment located within the PV Array areas and the proposed onsite substation. The substation would be more than 600m from the nearest residential property (North Lodge Farm/Goose Lodge on Uffington Lane). Noise and vibration effects from operational traffic have been scoped out as being unlikely to be significant.

- 3.8.13. The baseline noise survey [[APP-080](#)] was carried out in January and February 2022 in consultation with KDC, RCC and LCC. The baseline noise environment was observed to be varied but typical of the rural location, with a range of natural noise sources and a varying influence of road traffic.
- 3.8.14. Permitted working hours (as revised during the Examination) are set out in section 2.7 of the outline CEMP [[REP8a-006](#)]. These generally permit construction activity to between 07:00 to 19:00 Monday to Friday and 09:00 to 18:00 on Saturday (with HGV deliveries, works likely to generate substantial levels of noise and percussive piling not permitted after 13:00 on Saturday without prior approval).
- 3.8.15. Table 3-5 of the outline CEMP and the outline DEMP [[REP10-008](#)] also include standard good practice measures such as the use of Best Practical Means to reduce noise and vibration disturbance during construction and decommissioning works. Section 61 consents (Control of Pollution Act 1974) would be required from the relevant local authority including construction noise limits for nearby noise sensitive receptors.
- 3.8.16. The Applicant's Assessment Methodology is contained in Appendix 10.2 of the ES [[APP-078](#)] and its worst case predictions for noise from construction and operation are set out in Appendix 10.5 (Noise Modelling) of the ES [[APP-081](#)].
- 3.8.17. For general construction activities, taking account of the short duration of potential noise impacts within proximity of residential receptors the impacts have been assessed by the Applicant as representing a negligible to low magnitude of adverse impact which corresponds to a negligible to minor significance of effect (not significant).
- 3.8.18. For operation, the Design Guidance (PE4.2 and PE4.3) contained in section 4.5 of the Design and Access Statement [[REP5-058](#)], and secured through Requirement 6 (Detailed design approval) of the draft DCO, would ensure that solar stations are located a minimum distance of 250m from residential properties and 50 metres from PRoW, permissive paths and rural roads.
- 3.8.19. Requirement 16 (Operational noise) of the draft DCO [[REP9-005](#)] requires the prior approval of an operational noise assessment to ensure that the authorised development is designed with mitigation so that operational noise rating levels do not exceed 35 decibels (dB) at residential properties.
- 3.8.20. Further measures are contained within the outline OEMP [[REP10-006](#)] to control operational noise including a requirement for noise levels from electrical plant to not exceed 50dB L_{Aeq} at PRoW and permissive paths.
- 3.8.21. Combined worst case noise levels from the proposed on-site substation and solar PV site would be 36 dB L_{ar} at Wood Farm and North Lodge Farm (both on Uffington Lane), marginally above the 35db threshold and higher, at night than background noise levels. This is assessed by the Applicant as being moderate adverse. Further mitigation measures

(including selection of quieter plan units and standard noise attenuation) are proposed to ensure that the limit of 35dB is achievable at all neighbouring properties.

- 3.8.22. Table 10-3 within Chapter 10 of the ES [[APP-40](#)] presents the Applicant's Summary of Effects for noise and vibration. The main findings and residual effects are as follows:
- During construction and decommissioning, no worse than minor adverse noise and vibration effects (not significant) would result upon dwellings and PRow users; and
 - During operation, no worse than minor adverse noise effects (not significant) would result upon dwellings and PRow users.

Consideration of issues arising during the Examination

Local Impact Reports (LIR)

- 3.8.23. RCC's LIR [[REP2-048](#)] expressed concern at the negative impact of noise and disturbance on residential amenity from construction traffic, noting that there will be periods for deliveries etc where the traffic movements will be greater than portrayed by the Applicant in the average movement figures provided. RCC's LIR also states that there should be no working on Saturdays as well as Sundays to provide residents with some respite from construction noise. In terms of operation, RCC's LIR expresses concern regarding the possibility of 'low-level hum' or 'buzz' from the proposed substation and transmission network.
- 3.8.24. The LIR of SKDC [[REP2-051](#)] expresses concern regarding significant potential disruption and negative impacts on the community from noise during the construction and decommissioning phases, including impacts on the existing PRow network.
- 3.8.25. LCC does not raise any specific impacts regarding noise or vibration in its LIR [[REP2-044](#)].

Construction

- 3.8.26. By the end of the Examination the final SoCG with RCC [[REP9-022](#)] confirmed that RCC is satisfied that the requirements of the draft DCO and outline CEMP will provide sufficient controls over construction noise. However, RCC still considers that there should be no construction work on Saturdays to provide respite to local residents and users of PRow and Bridleways.
- 3.8.27. The final SoCG between with SKDC [[REP9-021](#)] records agreement on matters relating to construction noise.
- 3.8.28. Issues raised by MPAG (including section 17 of its Written Representation [[REP2-090](#)]) and local residents about construction effects include concerns regarding the impact of noise from proposed piling activities. The Applicant explained at ISH2 [[REP4-041](#)] that noise levels from piling would only exceed the significant threshold of 65dB if they occur within approximately 130-140m of residential properties for a sustained period.

In this case it is likely that such noise would occur for less than one month within such proximity (the Applicant expects that at least a row of panels would be able to be inserted by piling in a day), and therefore the impact would be reduced to minor adverse (not significant) with noise levels decreasing as distances from receptors increase over time.

- 3.8.29. In some instances, Horizontal Directional Drilling (HDD) may be required (for example to protect high value vegetation) which could be required to continue beyond the general permitted construction hours leading to potentially significant effects. However, given the limited drilling distances required and hence the short period of such works, along with the measures set out in the outline CEMP (including a noise limit of 45dB LAeq at residential properties for night-time HDD works), we are satisfied that no significant effects would arise.
- 3.8.30. Whilst it would be possible for works to take place concurrently at different locations across the site, there would be only limited periods of works near to sensitive receptors where noise effects would be greatest. Taking account of the proposed mitigation and noise management measures, we are satisfied that the combined noise and vibration effects of concurrent works across the wider site would not be significant.
- 3.8.31. With regards to concerns regarding the construction effects on equestrian activity, we consider that, given the limited period of construction works in any given location along with the availability of alternative routes for horse riders to take in the surrounding area, it is unlikely that there would be any significant effects from noise or vibration on equestrian users.
- 3.8.32. Turning to construction hours, in addition to the standard construction hours outline above, Table 2-1 of the outline CEMP [[REP8a-006](#)] contains further controls on the daily extent of percussive piling that would be allowed within 400m of residential properties along with a prohibition on piling within 400m of residential properties on Saturdays. We recognise the concerns of local residents in connection with the proposed construction hours. However, taking account of all the relevant measures in the outline CEMP, we are satisfied that the proposed construction hours in this case strike a satisfactory balance between the protection of amenity and the construction needs of the project, including a desirability to reduce the overall time period of construction as far as practicable and reasonable.
- 3.8.33. In terms of construction traffic noise effects, taking account of the methodology set out in Calculation of Road Traffic Noise (HMSO, Department of Transport - 1988), the number of associated traffic movements would not be such to result in any significant noise effects for receptors, including residential properties, adjacent to the access route.
- 3.8.34. We acknowledge that it is possible that the effects of wind may lead to noise being audible over greater distances. The Applicant has confirmed that this has been considered in its assessment. We are satisfied that any such effects would not significantly change the Applicant's conclusions,

taking account of the limited duration of the construction activities for each part of the scheme and the variability of wind conditions.

- 3.8.35. With an estimated construction phase of two years, we recognise that a project of this form and scale is likely to result in noise and disturbance, including for local residents and recreational users of the countryside. However, we are satisfied that the proposed management and mitigation measures would avoid significant adverse effects during construction and would also minimise other adverse effects as far as reasonably possible.

Operation

- 3.8.36. Concerns have been raised by IPs, including in RRs and WRs, regarding noise from the proposed sub-station, plant and equipment during operation. MPAG maintain concerns in its final SoCG [REP9-023] regarding the effect of wind travel on noise effects, as well as the impact of noise type/tonality on residents and users of PRoW.
- 3.8.37. The Applicant's response to our ExQ1 9.0.5 [REP2-037] summarises how its assessment has identified any distinctive tonal, impulsive or low frequency characteristics of noise. It notes that operational noise would be relatively continuous in nature and is unlikely to have any impulsive characteristics. In addition, some equipment may have a distinctive 'hum' or 'whine'. We are satisfied that the assessment in the ES has satisfactorily taken account of such characteristics, including the addition of a +4db penalty following guidance in BS4142.
- 3.8.38. The main potential source of operation noise would be from the Onsite Substation. North Lodge Farm Bungalow (also known as Goose Lodge) is the nearest residential property located at least 600m to the south-east. At this property and at Wood Farm, the combined worst case predicted noise levels would be marginally above the 35dB LAr rated noise level. However, we are satisfied that through detailed design, combined operational rated noise levels of below 35dB can be achieved at residential properties (measured externally) leading to negligible to minor adverse significance of effects for residential receptors. This 35dB limit at residential properties would be secured through Requirement 16 of the DCO [REP9-005] which includes the need for the approval and implementation of an operational noise assessment containing details of how the design has incorporated mitigation required to achieve this limit.
- 3.8.39. Recreational users of footpaths and roads could experience noise effects during the operation. During the Examination, the Applicant sought to strengthen the Design Guidance PE.4.2 [REP5-058], secured by Requirement 6 (Detailed design approval) of the draft DCO so that solar stations and storage containers would be located at least 50m from PRoW, permissive paths and roads (excluding A and B roads). The outline OEMP [REP10-006] has also been updated to ensure that noise levels from plant will not exceed 50dB_{L_{Aeq}} at PRoW and permissive paths.
- 3.8.40. The Applicant's submission following ISH2 (Appendix D of REP4-041) demonstrates that the noise levels of footpaths would be capable of

being, for the large majority of locations along footpaths, considerably below the 50 dB maximum, meaning that were there would be audible effects they will be of no more than minor significance. Similarly, there is no evidence put forward by any other part to suggest that operational noise would lead to any harm from noise for equestrians.

- 3.8.41. Further to concerns raised during the Examination, the Applicant has added provisions to the outline OEMP [[REP10-006](#)] to ensure that acoustic measurements of equipment are carried out following construction and commissioning to ensure compliance with the relevant noise limits.
- 3.8.42. The outline OEMP also includes provision for regular maintenance of equipment, monitoring and a complaints procedure. This would include the identification of any changes in sounds pitches or volume and carrying out relevant maintenance. Further details of such measures would be included in the detailed OEMP(s) which would be subject approval of the relevant local authority under Requirement 12 (Operational environmental management plan) of the draft DCO. The compliance with these and other measures within the outline OEMP will be important to ongoing noise management throughout the operation phase.
- 3.8.43. We have considered the operational effects on the basis of the proposed 60-year operational time limit which is long term and would not reduce the effects in relation to a permanent position. Overall, we are satisfied that, through the proposed mitigation and management measures, no significant adverse effects from noise during operation would result upon health and quality of life. Suitable measures are in place and secured by the draft DCO to ensure that all adverse effects are properly mitigated and minimised.

Decommissioning

- 3.8.44. The outline DEMP [[REP10-008](#)], secured by Requirement 18 of the draft DCO, contains measures to minimise noise and vibration during decommissioning works which we consider to be satisfactory subject to the detailed DEMP being approved by the relevant local authority.

Conclusion

- 3.8.45. Although there would be some potentially disruptive noise during construction and decommissioning, we are satisfied that the measures proposed by the Applicant would satisfactorily mitigate and minimise the adverse effects. During operation we are also satisfied that suitable measures would be in place to ensure that the detailed design would not lead to any significant effects.
- 3.8.46. In the context of section 5.11 of 2011 EN-1, we conclude that the Proposed Development would:
- Avoid any significant adverse impacts on health and quality of life of from noise; and

- Mitigate and minimise other adverse impacts on health and quality of life from noise.

3.8.47. In this case, there would not be any improvements to health and quality of life compared to the existing baseline scenario. However, this does not weigh against the proposal as it is only required 'where possible' and we do not consider it to be realistic or pragmatic in this case for actual improvements to be made.

3.8.48. We are also satisfied that the appropriate mitigation measures are set out in the relevant outline management plans and properly secured in the draft DCO with final details, to achieve good design in this context, subject to the approval of the relevant local authority. These measures along with the operational noise assessment that would be required under Requirement 16 of the draft DCO would ensure that level of noise arising from the construction, operation and decommissioning stages are acceptable.

3.8.49. Overall, the Proposed Development would accord with the relevant policy aims of 2011 EN-1 along with 2023 draft EN-1 and EN-3, along with the relevant Development Plan policies and the NPPF. Taking all relevant matters into consideration, we conclude that noise and vibration matters are neutral in the planning balance.

3.9. SOCIO-ECONOMICS

Introduction

3.9.1. This section considers the socio-economic matters related to the Proposed Development. These include impacts on businesses, employment and tourism as well as effects from electromagnetic fields (EMF) and effects on users of PRow.

Policy background

National Policy Statements

3.9.2. The 2011 EN-1 requires that the Applicant's assessment should include the creation of jobs and training opportunities, the provision of additional local services and infrastructure such as educational and visitor facilities, effects on tourism, the impact of the influx of workers during construction, operation and decommissioning and cumulative effects. High quality design is cited as one possible mitigation measure that can improve the visual experience for both visitors and the local community.

3.9.3. 2011 EN-1 states that the decision maker should have regard to socio-economic impacts identified by the Applicant and from any other sources considered to be important and relevant. It goes on to state that the decision maker may conclude that limited weight is to be given to assertions of socio-economic impacts not supported by evidence. Consideration should also be given to the necessary mitigation of impacts and any legacy benefits.

- 3.9.4. Paragraph 5.10.2 of 2011 EN-1 states that where green infrastructure is affected, the decision maker should consider imposing requirements to ensure that the connectivity of the green infrastructure network is maintained. This is echoed in the 2023 draft EN-1.
- 3.9.5. The importance of PRow, National Trails as recreational facilities for walkers, cyclists and horse riders is recognised in 2011 EN-1. It expects applicants to take appropriate mitigation measures to address adverse effects.
- 3.9.6. 2023 draft EN-1 contains broadly similar policies in relation to socio-economic matters as the designated NPS. However, it also states that the applicant should consider developing accommodation strategies, especially during construction and decommissioning that would include the need to provide temporary accommodation for construction workers. It goes on to say that the SoS may wish to include a requirement for an employment and skills plan to promote local employment and skills opportunities.
- 3.9.7. In relation to PRow and National Trails, the 2023 draft EN-1 expects applicants, where appropriate, to consider opportunities to improve or create new access. The SoS is required to consider whether the mitigation measures put forward are acceptable and whether other provisions should be included in the grant of consent.
- 3.9.8. The 2023 draft EN-3 also recognises that solar PV projects may affect PRow networks. This may include temporary stopping up during construction, however, applicants are advised to keep rights of way open as far as is practicable and safe. Applicants are also encouraged to design the layout and appearance of the site to ensure the continued recreational use of PRow where possible during construction and operation.
- 3.9.9. Encouragement is also given to minimise the visual outlook from rights of way taking into account the impacts on any other visual amenities in the surrounding landscape. For instance, footnote 80 identifies the scope for screening along PRow to minimise the outlook into solar farms may impact on the ability of users to appreciate the surrounding landscape. Applicants should consider and maximise opportunities to facilitate enhancements to PRow and the adoption of new PRow. Details of management should be provided in an outline Public Rights of Way Management Plan.
- 3.9.10. 2011 EN-5 provides information on the assessment of effects of electromagnetic fields (EMF). This guidance is carried forward into the 2023 draft EN-5.

National Planning Policy Framework

- 3.9.11. The NPPF says that planning decisions should help to create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need for economic growth taking account

of local business needs. Decisions should enable the development and diversification of agricultural businesses.

- 3.9.12. It also states that planning decisions should aim to achieve healthy, inclusive and safe places that enable and support healthy lifestyles, for example through the provision of green infrastructure. Furthermore, proposals should protect and enhance PRow and access, including taking opportunities to provide better facilities for users, for example by providing links to existing networks.

Development plan policies

- 3.9.13. RCC's Core Strategy Policy CS1 (Sustainable Development Principles) requires new development to contribute towards creating a strong, stable and diverse economy. Policy CS13 (Employment and Economic Development) outlines a strategy for employment focussed on high skilled, knowledge based, leisure and tourism industries. In addition, Policy CS15 (Tourism) establishes the strategy for tourism in Rutland, including provision for visitors which is appropriate in use and character to Rutland's settlements character and countryside.
- 3.9.14. Policy CS16 (The Rural Economy) encourages agricultural diversification where this would be consistent with maintaining and enhancing the environment. Policy CS20 (Energy Efficiency and Low Carbon Energy Generation) supports low carbon energy projects where environmental, social and economic impacts can be addressed.
- 3.9.15. RCC Core Strategy Policy CS23 (Green Infrastructure, Open Space, Sport and Recreation) seeks to develop a network of paths and cycleways and resists development that would result in the harm to the use or enjoyment of green infrastructure by the public.
- 3.9.16. South Kesteven Local Plan Policy SD1 (The Principles of Sustainable Development in South Kesteven) expects developments to contribute towards creating a strong, stable and diverse economy. Policy RE1 (Renewable Energy Generation) requires that proposals can demonstrate the support of the local community. The Renewable Energy Appendix of the Local Plan identifies that extensive areas of countryside are popular destinations for walking, cycling and horse riding with a network of public rights of way and bridleways.
- 3.9.17. South Kesteven Local Plan Policy EN1 (Green Infrastructure) requires developments to ensure that new and existing green infrastructure is integrated into the design of the scheme taking opportunities to enrich biodiversity and enable greater connectivity for all. Where adverse impacts on green infrastructure are unavoidable development will only be permitted if suitable mitigation measures for the network are provided.

Applicant's approach

- 3.9.18. Chapter 14 of the ES (Socio-Economics) [[APP-044](#)] provides an assessment of the effects during the construction, operational and

decommissioning phases on the economy in relation to employment, Gross Value Added (GVA), tourism as well as for users of PRow.

3.9.19. Chapter 14 is supported by Appendix 14.1 (Policy Context) [[APP-099](#)], Appendix 14.2 (Assessment Methodology) [[APP-100](#)] and Appendix 14.3 (Consultation Summary)[[APP-101](#)]. An outline Employment, Skills and Supply Chain Plan (ESSCP) [[APP-211](#)] was also provided. Appendix 6.5 of the ES (Amenity and Recreation Assessment) [[APP-058](#)] considers effects to users of recreational resources, including PRow and permissive paths.

3.9.20. Economic and tourism affects are considered across the local authority areas of Rutland and South Kesteven. In addition, a specific focus on tourism receptors within a 2km radius of the Order limits is applied to align with the study area for landscape considerations as intervisibility between tourism assets and the Proposed Development may influence the visitor experience. Effects on users of PRow are assessed within a 500m radius of the Order limits.

Baseline conditions

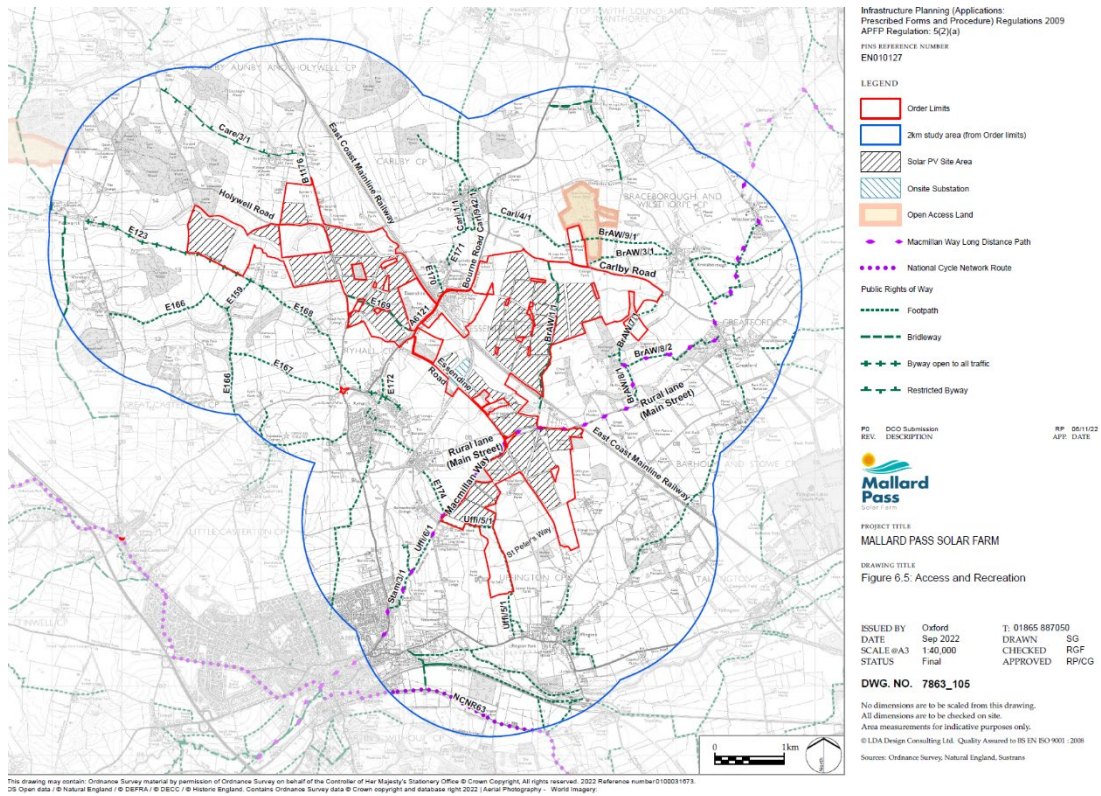
3.9.21. Chapter 14 of the ES explains that land within the Order limits comprises of arable farming fields producing cereals and break crops. They are operated by four farms, namely Grange Farm, Manor Farm, Wood Farm and Wood Farm Barn. The ES identifies that 17.4% of the total combined area of the four farms lies within the Order limits. Table 14-7 of the ES outlines that the farms provide a combined total of 13 full time equivalent (FTE) jobs with additional period work for contractors.

3.9.22. Across Rutland and South Kesteven, Section 14.2 of the ES identifies demographic and economic traits which include accommodation and food services, construction, retail and manufacturing being large employment sectors in the study area.

3.9.23. The tourism offer of Rutland and South Kesteven attracts those seeking to participate in countryside activities, including walking. In 2018, tourism spend generated £135.6 million and £188.7 million in Rutland and South Kesteven respectively. Table 14-10 of the ES identifies nine accommodation providers within 2km of the solar PV area with a total of around 79 bedspaces.

3.9.24. Tourism receptors close to the Order limits include the MacMillan Way, PRow Network and Burghley House. Approximately 700m of the MacMillan Way, a long-distance footpath between Lincolnshire and Dorset, lies within the Order limits. Other PRow as identified and illustrated in Figure 6.5 of the ES [[APP-137](#)] include sections of bridleways E169 and E182 and footpaths BrAW/7/1 and Uffi/5/1. A copy of this plan is provided below.

Figure 5: Public Rights of Way in the vicinity of the Order limits



Embedded mitigation

3.9.25. Embedded mitigation is identified in the various management plans for each phase of the Proposed Development with a view to avoiding adverse effects, namely, the outline CEMP, OEMP, DEMP, CTMP, LEMP (and accompanying Green Infrastructure Strategy), Travel Plan and Design Principles of the Design and Access Statement.

3.9.26. Specifically in relation to PRow, embedded mitigation and enhancement measures as identified in Appendix 6.5 [APP-058] of the ES include:

- Retention of all PRow;
- Provision of four new permissive paths for walkers, cyclists and horse riders totalling 8.1km to create new loops and connections with the existing Public Right of Way network;
- Offsets of at least 15m either side of Public Rights of Way and permissive paths to the proposed perimeter fencing;
- Offsets of inverters from PRow and permissive paths of at least 50m;
- New and infill hedgerow planting along existing and proposed permissive PRow within the Order limits; and
- The alignment of internal tracks to avoid where possible existing PRow and siting them sensitively to in relation to existing trees and hedgerows.

Outline Employment, Skills and Supply Chain Plan

3.9.27. The final outline ESSCP [REP6-012] includes provisions to create employment and skills opportunities and considers matters relating to

ethical procurement. It includes details of how the Applicant would work with local stakeholders, including education, training providers and business.

Summary of effects

- 3.9.28. The ES concludes that during the construction phase, an economic benefit from employment is expected over the 24-month construction period. An average of 150 FTE gross temporary jobs is expected to be created up to a maximum of approximately 400 workers in peak periods.
- 3.9.29. The ES estimates that around 50% of these construction jobs would be filled by people from outside of the study area with construction workers potentially travelling from larger urban area such as Peterborough. Specialist solar professionals may travel from further afield. A displacement factor of 25% is also assumed to take account of the benefits of the Proposed Development being offset by related reductions elsewhere. As such, it is estimated that 56 of the 150 average FTEs would be taken by people in the study area. During operation, a net gain of 4.5 FTE is expected taking account of leakage and displacement.
- 3.9.30. In relation to tourism during construction, an analysis of accommodation capacity and occupancy indicates a benefit to providers from construction worker stays during the winter months in particular although it is likely that during peak construction periods, accommodation within a one-hour drive would be utilised such as in Peterborough. The Applicant predicts minor/negligible adverse effects on the tourist economy during construction and operational. However, no significant reduction in tourist visits to the study area is expected.
- 3.9.31. The Amenity and Recreation Assessment provided at Appendix 6.5 of the ES identifies potential effects in relation to resources including PRoW. These include temporary diversion or closures, changes to the experience of users arising from actual or perceived changes to noise, views or traffic movements and the number of people using them with adverse effects identified primarily to occur during the construction phase.
- 3.9.32. The Applicant considers operational effects on character and amenity would be greatest on routes within the solar PV array area. Some long distance and open views would become more visually enclosed over time with the Proposed Development and associated planting. Initially, the solar PV arrays would be more noticeable until the planting matures.
- 3.9.33. Table 3 of Appendix 6.5 [[APP-058](#)] of the ES summarises the significance of effects on individual PRoW both within and outside of the Order limits across the construction and operational phases. Slight adverse effects reducing to minimal or neutral effects are identified post maturation of planting at year fifteen for most routes except for the following:
- Bridleway E169 – major-moderate adverse effects during construction reducing to moderate at year fifteen; and
 - Bridleway E182 (BrAW/1/1) – major adverse effects reducing to moderate at year fifteen.

- 3.9.34. Users of both bridleways would experience PV arrays on either side of the bridleway along some sections. They would also be temporarily diverted during construction of internal access tracks.
- 3.9.35. Table 14-3 of the ES provides an overall summary of socio-economic effects as follows:
- During the construction phase, minor beneficial effects are identified for employment generation and GVA. A minor/negligible adverse effect for tourism and negligible effects on PRow are identified (all non-significant).
 - During operation, negligible benefits for employment and GVA and minor benefits for users of PRow are identified along with a minor/negligible adverse effect on tourism (all non-significant). (However, we note that paragraph 14.5.50 of the ES concludes that there would be "*minimal to negligible adverse effects*" to PRow users during operation rather than minor benefits).
 - During decommissioning, minor beneficial effects for employment and GVA, negligible adverse effects for PRow and minor/eligible adverse effects for tourism are identified (non-significant).
- 3.9.36. The Applicant considers that the subsequent inclusion of a 60-year time limit to the operational phase would not change the conclusions of the ES for socio-economics [[REP7-038](#)].

Issues arising during the Examination

Local Impact Reports

- 3.9.37. All three LIRs identified concerns regarding adverse effects on the users of PRow. RCC's LIR [[REP2-048](#)] considered that the Proposed Development would discourage the use of the PRow network due to visual effects of the panels and planting leading to users feeling like that they are "walking a corridor in the countryside". It considers that this would diminish the enjoyment of the landscape and therefore there would be a negative impact. Whilst it acknowledged the proposed permissive paths, it deems that their appeal would be reduced by the adverse effects similar to those on PRow.
- 3.9.38. In addition, RCC raised concerns that the permissive paths could be withdrawn at any time by the landowner. It says the overall impact of the provision of paths across the site is considered to be negative and at best neutral.
- 3.9.39. A negative impact on the local tourist industry is identified by RCC where enjoyment of the countryside is a key aspect of the appeal. This includes businesses in Essendine such as a local vineyard, Mallard Point Ltd.
- 3.9.40. LCC [[REP2-044](#)] identify some economic benefits during construction and decommissioning in relation to employment opportunities and increased spend on local services but that they would be more limited during operation.

- 3.9.41. LCC acknowledge that all PRow would be retained albeit with some temporary diversions. However, a negative impact is identified to their recreational value due to visual effects. A potential positive impact arising from the proposed permissive paths is identified but concerns are raised over the mechanism that they are secured over the lifetime of the development. LCC also called for the permissive paths to be adopted as part of the definitive network as it considered the Applicant to be proposing the solar farm on a permanent basis.
- 3.9.42. SKDC's LIR [[REP2-051](#)] highlights that South Kesteven District includes extensive areas of countryside which are popular destinations for walking, cycling horse riding and fishing. Negative impacts on public footpaths and their recreational value and the wider visitor economy is noted as a key concern during construction and operation. Concern is also reflected in the local community.
- 3.9.43. Construction is deemed to have the potential for significant negative impacts with temporary rights of way diversions. The permissive paths are a potential positive but again the extent to which they are secured is questioned by SKDC.

Position of the Local Authorities at the close of the Examination

- 3.9.44. At the close of the Examination, the concerns outlined above generally remained.
- 3.9.45. However, RCC's SoCG [[REP9-022](#)] confirmed that it was satisfied that the provisions in outline OEMP would secure PRow and the permissive paths throughout the lifetime of the development. LCC [[REP9-020](#)] and SKDC [[REP9-021](#)] also acknowledged that the permissive paths are secured over the operational phase but LCC maintained that permanent adoption of these routes would be appropriate.

Effects on users of PRow and proposed permissive paths

- 3.9.46. In addition to the concerns expressed by the local authorities, a significant number of IPs, including MPAG [[REP2-090](#)], the Stamford, Bourne and the Deepings group of the Ramblers [[REP2-100](#)], Leicestershire and Rutland Area Ramblers [[REP2-073](#)] and Peterborough Ramblers [[REP2-096](#)] also identified concern about the impact of the Proposed Development on PRow during the construction and operational phases.
- 3.9.47. During construction, concerns were raised regarding the impacts and management of possible temporary closures and diversions of PRow. The ExA sought clarification (ExQ1 10.0.6) [[PD-008](#)] from the Applicant on the location of temporary diversions and the length of time that they would be in place. The Applicant confirmed [[REP2-037](#)] that only Bridleways E169/1 and BrAW/1/1 would need to be temporarily diverted to facilitate access track works but that the precise locations or length of time could not be specified yet. This would be determined at the detailed design stage.

- 3.9.48. Furthermore, Table 3-10 of the outline CEMP [[REP8a-006](#)] provides details of how temporary closures and diversions would be managed to minimise disruption and safety issues. PRow would be reinstated when works are complete. The legal minimum widths for footpaths and bridleways would be maintained throughout construction. Similar provisions for potential maintenance works in the operational and decommissioning phases are made in Table 3-4 of the outline OEMP [[REP10-006](#)] and Table 3-10 of the outline DEMP [[REP10-008](#)].
- 3.9.49. Both documents require details of PRow closures and diversions to be subject to local authority approval prior to works being carried out. The Community Liaison Officer would share details with the Community Liaison Group once approved. The detailed versions of the CEMP and OEMP themselves are also subject to local authority approval under Requirements 11 and 12 of the draft DCO [[REP9-005](#)] respectively.
- 3.9.50. Paragraph 3.10.30 of the 2023 draft EN-3 calls for applicants to set out the detail of how PRow would be managed to ensure their safe use in an outline PRow Management Plan. This differs from the Applicant's approach for the Proposed Development which includes relevant provisions in the outline CEMP, OEMP and DEMP as outlined above.
- 3.9.51. In response to question 10.0.5 at ExQ2 [[REP5-012](#)], the Applicant maintained that this approach was appropriate as the necessary details were provided. The creation of a separate PRow Management Plan for each phase of the Proposed Development would, it argued, create an unnecessary number of additional management plans. At the close of the Examination, the local authorities agreed with this position. Whilst there technically would be a degree of conflict with 2023 draft EN-3, we are satisfied that appropriate safety measures would be in place in the outline CEMP, OEMP and DEMP.
- 3.9.52. By the close of the Examination, the local authorities had no outstanding concerns regarding the management of PRow, including temporary closures or diversions, subject to further consideration at the detailed design stage. Natural England [[REP2-093](#)] also welcomes the commitment in the outline CEMP to manage diversions. We consider the outline measures to be appropriate.
- 3.9.53. Concerns were also raised by several IPs, including RCC [[REP2-047](#)], about visual and noise effects related to the Proposed Development undermining the attractiveness of the PRow network within and around the Order limits therefore reducing the extent to which they would be used by walkers, cyclists and horse riders. Similar concerns were also expressed about such effects on the proposed permissive paths.
- 3.9.54. In particular, the potential for a "corridor effect" along routes relating to fencing and screening proposals alongside the PV array areas. It was considered by some IPs that the visual impact of this, as well as residual views of the PV arrays prior to the maturation of planting would significantly reduce the sense of being in the open countryside. This was

cited as a key attraction of the PRow network and as being essential for health and well-being.

- 3.9.55. In response to EXQ1 10.0.5 regarding the number of users of the PRow network and key routes or promoted circular walks, the local authorities were unable to source user data. However, SKDC [REP2-052] stated that anecdotal evidence suggested that routes were well used. MPAG [REP2-089] also drew upon local knowledge which identified a marked increase in people choosing to access the countryside for recreation since the Covid-19 pandemic.
- 3.9.56. Key promoted routes identified by IPs include the Danelaw Way and the MacMillan Way which is a long distance footpath. MPAG also identified "Will's Walks" [REP2-085], a publication with a series walks around Rutland and Stamford as well as wider routes used by visitors [REP2-079] and residents.
- 3.9.57. The Applicant's response [REP3-022] referred back to the assessment of PRow in Appendix 6.5 of the ES [APP-058]. It also considered the promoted walks identified by MPAG from a visual perspective as well as providing detailing plans [REP3-037] to clearly illustrate which PRow would be directly adjacent to the Solar PV site on both sides, one side or not directly adjacent. It concluded that the majority of identified routes would be unaffected. Ryhall Walk No.1 would be most affected with 32% of the route adjacent to the Proposed Development, either running directly between or to the side of the Solar PV area.
- 3.9.58. In response to concerns that the PV arrays and associated fencing and planting would lead to a corridor effect, the Applicant stated that the proposed 15m offset either side of PRow as detailed in the outline LEMP [REP7-021] would provide some mitigation with enhancements in the form of permissive paths. This distance was also cited as exceeding the 4m minimum width identified in guidance issued by the British Horse Society [REP4-041] for solar farms near routes used by equestrians. Other aspects of the guidance had also been applied by the Applicant including the use of wire mesh fencing and the provision of permissive paths that could be used by horses.
- 3.9.59. Furthermore, the Applicant considered that enclosure by hedgerows and hedgerow trees is characteristic of the Kesteven Uplands and Rutland Plateau – Clay Woodlands landscape character areas as set out in the Rutland Character Assessment (2003) and South Kesteven Character Assessment (2007) which promote new woodland and hedgerow planting and the use of new planting to minimise visual impacts.
- 3.9.60. Planting proposals would also be subject to consideration and approval by the local planning authorities at the detailed design stage with provision added for community consultation on landscaping proposals next to footpaths. The ExA notes that whilst some parts of PRow are enclosed by hedgerows, large parts are not. As such, enclosure is not a uniform experience of PRow users.

- 3.9.61. In relation to noise concerns during operation, following discussion at ISH2 [[REP4-041](#)], and in response to ExQ2 10.0.3 [[REP5-012](#)], the Applicant updated the Design Guidance in the Design and Access Statement [[REP5-058](#)] to increase the distance between solar stations, PRoW, permissive paths and rural roads to beyond 50m where possible. Table 3-5 of the outline OEMP [[REP10-006](#)] was also updated to require the detailed OEMP to explain how final electrical plant layout and specification would be designed such that noise levels would not exceed 50 dB LAeq on these paths.
- 3.9.62. Paragraphs 1.2.9 to 1.2.12 of Appendix 6.5 [[APP-058](#)] also consider potential effects on three Definitive Map Modification Order (DMMO) applications that have yet to be determined.
- 3.9.63. The only one potentially affected by the Proposed Development is a DMMO application (DMM O440TJ) located within field 36 of the Order limits to the east of Bridleway BrAW/1/1. The southern part lies within the PV array area with the remainder in the Mitigation and Enhancement Area. The Applicant acknowledges conflict with the southern part of the DMMO. However, the DMMO route would be a cul-de-sac route and the proposed permissive paths are deemed by the Applicant to provide a more suitable recreational opportunity. Given the lack of connectivity of DMM O440TJ with the wider PRoW network, the ExA concurs with this conclusion. Article 12 of the draft DCO makes provision for the claimed PRoW and is considered in Chapter 7 of this report.
- 3.9.64. At ISH2, the Applicant confirmed that the permissive paths were secured over the lifetime of the Proposed Development through Requirement 7 of the draft DCO. Table 3-4 of the outline OEMP also specifies that four permissive paths would be provided. However, despite calls from IPs, including LCC for the permissive paths to be permanently adopted as PRoW, the Applicant confirmed that the permissive paths would be removed at decommissioning and that it would not be appropriate to impose new PRoW on land returned to agricultural use. In addition, it clarified that the permissive paths would be an enhancement measure and not required as mitigation.
- 3.9.65. We walked along and observed sections of all of the indicative routes of proposed permissive paths as well as connecting PRoW on its USI on 19 October 2023 [[EV-001b](#)]. We consider that the permissive paths, during the lifetime of the Proposed Development, would provide new connections and opportunities for users to undertake circular walks, runs or rides and to link up with the wider PRoW network. Along with interpretation boards and signage, they would also provide an opportunity for the community and visitors, if they wish, to learn about the Proposed Development and local area.
- 3.9.66. However, we also observed that conditions underfoot were poor due to the wetness of the clay-based soils, particularly in areas where grass was not established. We note that Requirement 7(2)(i) of the DCO requires the final routing, specification and maintenance regime for each permissive path to be included in the LEMP which is subject to approval

by RCC and SKDC. We remain concerned at the potential for use of these paths at times when ground conditions are poor.

- 3.9.67. The local authorities recognise that the proposed permissive paths would provide a benefit albeit this is limited by the same issues that affect the PRow. Natural England also welcome the inclusion of permissive paths and associated buffers [[REP2-093](#)].
- 3.9.68. We also note that concerns of IPs, including RCC, LCC, SKDC and MPAG regarding effects on PRow largely remained at the close of the Examination.
- 3.9.69. To conclude on this matter, we agree that the PRow network within the Order limits and wider vicinity provides a much-valued resource to the local community. The permissive paths would provide for a limited benefit, but their location within the Order limits would generally mean that the experience of users would be considerably influenced by the presence of a solar farm. Overall, we consider the permissive paths to be a minor benefit of the Proposed Development as they would provide additional recreational opportunities. However, users of them would experience effects akin to those identified for PRow.
- 3.9.70. We consider that the Applicant has put forward reasonable mitigation measures to minimise adverse effects on PRow during construction, operation and decommissioning. However, we still consider that there would be significant residual adverse effects. Whilst the Applicant's conclusions of Chapter 14 of the ES acknowledge that there would be negligible residual adverse effects on users of PRow during the construction and decommissioning phases, we consider that overall moderate adverse effects are more likely, taking account of the limited duration of works at a given time in a particular area of the site.
- 3.9.71. This conclusion more closely reflects the Applicant's own assessment of the effects on Bridleways E169 and E182 (BrAW/1/1) where Major-Moderate and Major effects respectively are identified during construction and operation whilst noting that lesser adverse effects would be experienced on other PRow. These two PRow appear to us to constitute key routes for local recreational users and they appear to be well used resources.
- 3.9.72. We disagree with the conclusion in the ES [[APP-044](#)] regarding effects on PRow users during operation. As outlined above, Table 14-13 concludes a minor benefit whilst paragraph 14.4.50 concludes a minimal to negligible adverse effect.
- 3.9.73. Whilst we acknowledge the permissive paths as an enhancement, mitigation to minimise visual and noise effects and the fact that all PRows would be retained, we do not consider that this sufficiently outweighs harms to derive an overall minor benefit or to result in a minimal to negligible adverse effect. The cumulative visual and noise effects, although reasonably mitigated, would still lead to change to the character of the immediate countryside. Not only does the PRow network

provide an opportunity for physical activity through walking, cycling or horse riding but they also enable people to connect with the open countryside and the wider community. The enjoyment of this valued asset would be diminished within the Order limits and study area.

- 3.9.74. We consider that the significant adverse effects would be limited to the footpaths within and near to the Order limits, particularly Bridleways E169 and E182 (BrAW/1/1), and that they would decrease further outside the Order limits. The effects, however, on the wider PRow network and its users would therefore not be significant. Overall, we consider that the effects during the operational phase on PRow users would be moderate adverse.

Effects on businesses and tourism

- 3.9.75. To address concerns raised by Mrs Beamish [REP2-117] and Mr Beamish during CAH2 [REP7-035] regarding the possibility of trespass, vandalism and highways safety issues arising from a section of a permissive path adjacent to the Mallard Point vineyard, the Applicant amended the indicative route of the permissive path at Deadline 7 with the agreement of the landowner. This is reflected in the subsequent Green Infrastructure Strategy Plan as appended to the outline LEMP [REP7-021] which is accepted by Mr Beamish [REP10-25]. The final routes of permissive paths would be specified in the detailed LEMPs as specified in Requirement 7 of the DCO.
- 3.9.76. In addition, concerns regarding disruption to the access of Church Farm during construction were also discussed at CAH2. Mr Beamish explained that the farm needed to maintain access at all times for articulated lorries. This might be impinged by the potential cable routing along the A6121 through Essendine. In response, the Applicant updated the outline CEMP to minimise and communicate any disruption should the cable route be necessary. Any inability to use the access would like to be for a limited period of time. With the updated outline CEMP, the ExA is satisfied that the Applicant has taken reasonable steps to minimise disruption to the business during construction.
- 3.9.77. Mr and Mrs Beamish [REP2-117] also identified wider and longer term conflict of the Proposed Development with the vineyard business. The vineyard is open to visitors with tours and events being part of the business as well as supplying drinks. It was considered that the Proposed Development would overlook the vineyard and deter potential customers from visiting. These concerns remained at the close of the Examination [REP10-025].
- 3.9.78. The ExA observed the Order limits, including fields 27 and 28 that adjoin the property to the east, from the vineyard during day 2 of the ASI on 18 August 2023 [EV-050]. We also observed the vineyard from the Order limits, including fields 27 and 28 during the USI [EV-001b] on 19 October 2023. We consider that the Applicant has taken proportionate steps to minimise the visual effects of the PV arrays on the business with the Mitigation and Enhancement Areas and a landscape buffer as detailed in the Green Infrastructure Strategy. Together with the topography, this

would provide a degree of separation and screening to reduce effects, particularly when the planting has matured.

- 3.9.79. In relation to wider effects on businesses and tourism, MPAG [[REP2-090](#)] questioned the Applicant's assessment that around 50% of the construction workforce would come from the local area. It pointed to demographic data in the Chapter 14 of the ES that indicated the local population was on average; older, more economically inactive and more highly qualified. Fewer manufacturing businesses are also present locally. As such, MPAG considered that the economic benefit in terms of construction jobs growth had been overstated by the Applicant with the resultant reliance on workers from outside of the area leading to more disruption and traffic.
- 3.9.80. We sought clarification on how the Applicant's had arrived at its estimate of 50% of jobs being filled by local people (ExQ2 10.0.2). The Applicant explained [[REP5-012](#)] that it had applied the Homes and Community Agency's Additionality Guide to inform the level of leakage of employment. Data from the 2011 Census also indicated that 70% of jobs within Rutland and South Kesteven were taken by people within the area. Other factors included the identified presence of 3,700 construction workers in the area in 2021 as well as measures in the outline ESSCP that sought to maximise local employment opportunities. Traffic disruption from construction workers would be minimised and managed through measures detailed in the outline Travel Plan and CTMP
- 3.9.81. The ExA considers that the Applicant's estimate is based upon credible evidence and therefore it provides a reasonable estimate of construction jobs that may be supported locally.
- 3.9.82. Concerns were also raised regarding the potential loss of jobs linked to the supply chain of the agricultural industry. The Applicant [[REP3-033](#)] pointed to its assessment in Chapter 14 of the ES that concluded that the four existing farm operations would continue to operate and support 13 FTE as at present. Opportunities for sheep farming may also arise from the Proposed Development.
- 3.9.83. The ExA considers that whilst agricultural production would be reduced as a result of the Proposed Development, there is no substantive evidence that would indicate that jobs in the wider industry would be negatively impacted to a significant degree. As such, there would be an overall minor benefit in terms of employment generation, particularly during the construction and decommissioning phases for a temporary period.
- 3.9.84. Harm to the tourism industry was also identified by IPs including RCC [[REP2-047](#)], SKDC [[REP2-051](#)] and MPAG [[REP2-090](#)]. As the countryside and enjoyment of the PRow network were a key attraction, the appeal of area to visitors might be diminished.
- 3.9.85. In response, the Applicant [[REP3-033](#)] pointed to the findings of the ES that although some tourism receptors may experience adverse effects,

the Order limits are located away from the main receptors in the study areas including Rutland Water, Burghley House and Stamford. It also points to research based in Cornwall from 2013³ that suggested visitors are generally ambivalent to the presence of large scale renewable when making holiday and leisure decisions. Following scrutiny at ExQ1 10.0.7 regarding the extent to which more local and recent research is available, the Applicant referenced [REP2-037] other examples of research that had considered the effects of wind farm and solar projects in Wales, Northumberland and Scotland that indicated no adverse effects to visitor numbers.

- 3.9.86. It is clear to us that countryside and access to the PRow network in the vicinity of the Proposed Development are key attractions for area and adverse effects are identified to these features. Whilst the available research indicates that there is little impact on tourism from renewable energy projects, representations at a local level suggest that there would be a negative impact on the visitor economy. That said, the visual and noise effects on the countryside and PRow users are localised and there is no substantive evidence that this would have a significant effect on the wider visitor economy of Rutland and South Kesteven as a whole. Local accommodation providers would benefit from overnight stays from construction workers, particularly out of the main holiday season but this would be a temporary benefit. Overall, we consider minor adverse effects on tourism during the operational phase are most likely.
- 3.9.87. A Relevant Representations was made by Stamford Shakespeare Company [RR-1079] regarding the possibility of noise pollution affecting the operation of the nearby open air theatre. The Applicant responded [REP2-037] to ExQ1 10.0.1 stating that the theatre which was located at Tolethorpe Hall was more than 2km from where the main sources of construction, operational and decommissioning noise would be found. Construction traffic would also not result in any perceptible increase in traffic noise. Taking these matters into account, we are satisfied that no significant noise effects would be expected.
- 3.9.88. Overall, the ExA accepts the Applicant's conclusions on effects on employment, GVA and tourism during the construction, operational and decommissioning phases as summarised in Table 14-13 of the ES.

Ethical procurement

- 3.9.89. The need to ensure the ethical procurement of solar PV panels and supporting equipment was identified as a key issue by a number of IPs, including in WRs from MPAG [REP2-090] and Alicia Kearns MP [REP2-180]. A potential risk that forced labour might be used in the supply chain was alleged.

³ Regen SW (2013) Survey: Wind and Solar Farms are an accepted part of the Cornish landscape for holiday makers.

- 3.9.90. In response to ExQ1 10.0.4 [[REP2-037](#)], ExQ2 10.0.7 and subsequent feedback from RCC [[REP5-024](#)] and SKDC [[REP5-025](#)] the Applicant provided updates to the outline ESSCP [[REP6-012](#)].
- 3.9.91. The final ESSCP is subject to approval by the local planning authorities and secured by Requirement 17 of the DCO. It includes a commitment to require any supplier to upload its modern slavery and human trafficking statement annually to the Home Office Register to enable monitoring by the local planning authorities. To further facilitate monitoring, a list of suppliers would also be made available to the local planning authorities prior to commencement. The list would also be updated as necessary.
- 3.9.92. The concerns of Alicia Kearns MP [[REP10-039](#)] and MPAG in its Final Position Statement [[REP10-024](#)] on this matter remained at the close of the Examination. MPAG considered that the updated outline ESSCP would not be effective in ensuring no use of forced labour or monitoring thereof. It also requests (paragraph 20.1 of its Final Position Statement) that attention is drawn 'to the SoS on the status of Canadian solar'.
- 3.9.93. We do acknowledge the reservations made by Interested Parties on the effectiveness of the measures in the outline ESSCP in this regard as they would not appear to offer any firm guarantee on procurement policy. Nevertheless, the sourcing of materials, including solar panels, is not a matter that is raised in 2023 draft EN-3 as being of relevance in this regard. Whilst the carbon implications of the sourcing of materials can be relevant along with any transport implications as considered elsewhere in our report, the wider sourcing of materials in general is not a matter that would generally be given significant weight in the determination of an application for development consent. It appears to us to be a matter that would, if necessary, most suitably be regulated by wider restrictions or controls outside the remit of this application. We therefore give very minimal weight to the concerns raised in respect of ethical procurement and do not consider it affects our overall conclusions on the application.

Electromagnetic fields and radio interference

- 3.9.94. Concerns were raised by IPs including Mr Croft [[REP5-042](#)] in relation to EMF effects on human health arising from the Proposed Development. The Applicant explained [[REP3-033](#)] that EMF is assessed in Chapter 15 of the ES (Other Environmental Matters) [[APP-045](#)]. This acknowledged that the Grid Connection Cable and Onsite Substation exceed 132kV and therefore would have the potential to cause EMF with potential for adverse effects on human health.
- 3.9.95. However, Chapter 15 of the ES concludes that EMF is unlikely to have any adverse effects on residential receptors. The Grid Connection Cable would be buried underground at a suitable depth and the Onsite Substation would be set back from Uffington Lane and designed in accordance with the Department of Energy and Climate Change (2012) Demonstrating compliance with EMF public exposure guidelines: voluntary code of practice. Paragraph 5.5.2 of Chapter 5 (Project Description) [[REP2-012](#)] also lists British Standards and National Grid

guidelines that would be applied to minimise the risks of magnetic field effects on receptors.

- 3.9.96. The ExA is satisfied that with the implementation of these guidelines, adverse effects on human health from EMF are unlikely.
- 3.9.97. In addition, concerns were raised by Mrs Threapleton [[REP5-045](#)] regarding potential radio interference arising from PV arrays that may affect recreational radio communications.
- 3.9.98. We note that both 2011 EN-1 and 2023 draft EN-1 acknowledge that energy projects may interfere with communications infrastructure. However, whilst the NPSs go on to state that this a particular problem for wind turbines, they do not refer to the implications for solar PV arrays or supporting infrastructure. Nor does the ExA have any substantive evidence before it that the Proposed Development would result in radio interference at Mrs Threapleton's property or elsewhere.

Local community benefits

- 3.9.99. Representations have been made (including by RCC in [REP2-048](#) and [REP10-020](#)) regarding the need for a package of measures to compensate or benefit the local community. Notwithstanding the specific elements within the Proposed Development that seek to provide benefits which we consider elsewhere under the relevant issues, the separate issues of community benefits or funding outside of the scope of the Proposed Development are not matters that we have given any further consideration or weight to.

Conclusions

- 3.9.100. The importance of PRow as a recreational resource and tourist attraction has been recognised by the Applicant and mitigation is proposed and secured to reasonably minimise effects during construction, operation and decommissioning. However, we consider that residual harm would result for PRow users during these phases.
- 3.9.101. The permissive paths are considered to be of minor benefit given that whilst they would increase the options for walkers etc during operation, the enjoyment of users would be constrained by the proximity to and effects of the Proposed Development.
- 3.9.102. During operation, we consider that significant adverse effects would result on PRow users within and near to the Order limits, most particularly on two routes. However, the effects would decrease further away from the Order limits and the wider PRow would therefore not be significantly affected. Therefore, overall, we consider that moderate adverse effects would result on PRow users during operation.
- 3.9.103. We also conclude that there would minor adverse effects on PRow users during the approximate 2-year construction period, noting that construction would be likely to take place in different parts of the Order limits at different times.

- 3.9.104. No PRow Management Plan is proposed as envisaged by 2023 draft EN-3 but we are satisfied that the CEMP, OEMP and DEMP adequately address the safety of PRow users. Despite the harm we have found in relation to PRow and taking account of the Applicant's proposals to minimise effects, we consider that the Proposed Development broadly accords 2011 EN-1 and 2023 drafts EN-1 and EN-3. We do not identify harm in relation to EMF effects.
- 3.9.105. There would be conflict with local policies, namely RCC Core Strategy Policy CS23 that resists development that would result in the harm to the use or enjoyment of green infrastructure by the public. South Kesteven Local Plan Policy RE1 also requires the support of the local community and significant concerns have been expressed by it in relation to the effect on PRow users.
- 3.9.106. Minor economic benefits in terms of employment generation and GVA are identified alongside minor adverse effects for tourism. Overall, taking account of the mix of adverse and beneficial effects, we consider that the effects on PRow, whilst they have been reasonably minimised lead to us conclude that socio-economic matters weigh to a little degree against the Proposed Development.

3.10. TRAFFIC AND TRANSPORTATION

Introduction

- 3.10.1. This section considers the traffic and transportation matters related to the Proposed Development, including construction traffic effects and routing, accidents and road safety. PRow are considered here in relation to Traffic Regulation Measures, condition surveys and remedial works. Effects on users of PRow are considered in section 3.9 of this report.

Policy background

National Policy Statements

- 3.10.2. Paragraph 5.13.3 of 2011 EN-1 states that where a project is likely to have significant transport implications, the Applicant's ES should include a Transport Assessment following guidance stipulated by the Department for Transport in consultation with the Highways Agency (now Highways England) and Highways Authorities in relation to the assessment and mitigation.
- 3.10.3. Paragraph 5.13.4 of 2011 EN-1 states that a travel plan should also be prepared where appropriate to include demand management measures alongside proposals to improve access via public transport, walking and cycling and to reduce the need for parking.
- 3.10.4. Paragraph 5.13.8 of 2011 EN-1 requires the decision maker to ensure that the Applicant has sought to mitigate impacts, including during the construction phase. Where mitigation is required, possible demand management measures must be considered. Paragraph 5.13.11 explains that the decision maker may attach requirements to a consent including on HGV numbers, routing and parking.

- 3.10.5. The 2023 draft EN-1 includes similar policies to EN-1. Paragraph 5.14.20 states that the SoS should not withhold consent if requirements can be imposed to mitigate transport impacts. The SoS should apply appropriately limited weight to residual effects and the surrounding transport infrastructure. Paragraph 5.14.21 of 2023 draft EN-3 states that refusal should only be considered on highway ground where there would be unacceptable impacts on highways safety, residual cumulative impacts on the road network would be severe, or the applicant does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.
- 3.10.6. In relation to solar PV projects, paragraph 3.10.20 of the 2023 draft EN-3 requires the applicant to consider the suitability of access routes during construction and operation although it states that the former is more likely to raise issues.
- 3.10.7. Paragraph 3.10.24 of 2023 draft EN-3 requires applicants to include the full extent of access routes necessary for operation and maintenance and an assessment of their effects. The most appropriate routes for construction should also be identified.
- 3.10.8. Paragraph 3.10.116 of 2023 draft EN-3 states that the applicant should demonstrate that all roads and bridges can accommodate weight and volume of loads and width of vehicles. Where modifications to roads are required, they should be identified and potential effects addressed in the ES. Cumulative effects should also be considered.
- 3.10.9. In relation to impacts, paragraph 3.10.152 of 2023 draft EN-3 identifies that traffic movements to and from solar PV sites are generally very light. It recognises the possible need to replace machine components may generate heavier commercial vehicle movements but suggests that they are likely to be infrequent.

National Planning Policy Framework

- 3.10.10. The NPPF broadly reflects the approach as set out in the NPSs, including the requirement for Travel Plans and Transport Assessments in support of proposals that are likely to generate significant movements.

Development Plan

- 3.10.11. Policy CS18 (Sustainable Transport and Accessibility) of RCC's Core Strategy sets key requirements for transport and access. It supports proposals that include a range of mitigation measures aimed at encouraging walking, cycling and public transport use, including Travel Plans. It also seeks adequate levels of parking.
- 3.10.12. Policy ID2 (Transport and Strategic Transport Infrastructure) of SKDC's Local Plan requires that all new developments apply key principles, including reducing travel demand through measures such as travel planning and public transport. Developments should not severely impact on the safety and movement of traffic on the highway network.

Compliance with the policy should be demonstrated through the provision of a Transport Assessment and/or a Travel Plan as appropriate.

- 3.10.13. Criterion 6 of the SKDC's Local Plan Renewable Energy Appendix in relation to solar farms requires the avoidance of glint and glare onto high-speed road and mitigation where required. A construction statement is also required to forecast vehicle trips and likely construction routes.

Applicant's approach

- 3.10.14. Chapter 9 of the ES (Highways and Access) [[APP-039](#)] provides an assessment of the effects of the Proposed Development during the construction and decommissioning phases that are expected to be similar in nature. Whilst some commentary is provided in relation to the operational phase, the ES assumes that traffic during this phase would be negligible and so is scoped out. The Planning Inspectorate's Scoping Opinion agreed with this position [[APP-050](#)].
- 3.10.15. Appendix 9.2 of the ES outlines the methodology for the assessment and confirms that it is based upon the Guidelines for the Environmental Assessment of Road Traffic (GEART), produced by the Institute of Environmental Assessment (IEA). The ExA sought clarification (ExQ2 11.0.4) from IPs on the implications of the new Environmental Assessment of Traffic and Movement guidance published in July 2023 by the Institute of Environmental Management (IEMA).
- 3.10.16. The Applicant's response [[REP5-012](#)] concluded that whilst Chapter 9 of the ES applied the GEART, its findings are still applicable and would be consistent with those reached had the 2023 IEMA guidance been applied. Responses from RCC [[REP5-025](#)], LCC [[REP5-019](#)] and National Highways [[REP5-036](#)] did not contest this position. The ExA is content that 2023 IEMA guidance does not have implications for the findings of Chapter 9 of the ES.
- 3.10.17. Potential impacts regarding the following are considered in Chapter 9 of the ES:
- Severance;
 - Driver Delay;
 - Pedestrian Delay;
 - Pedestrian and Cyclist Amenity;
 - Fear and Intimidation;
 - Accidents and Road Safety; and
 - Hazardous Loads.
- 3.10.18. Other appendices in support of Chapter 9 include:
- Appendix 9.3 Consultation Summary [[APP-073](#)].
 - Appendix 9.4 Transport Assessment (TA) [[APP-074](#)]
 - Appendix 9.5 Baseline Flows [[APP-075](#)]
 - Appendix 9.6 Construction Traffic Impact Assessment [[APP-076](#)]
- 3.10.19. An outline Construction Traffic Management Plan (CTMP) [[APP-212](#)] details construction traffic routing to the primary and secondary

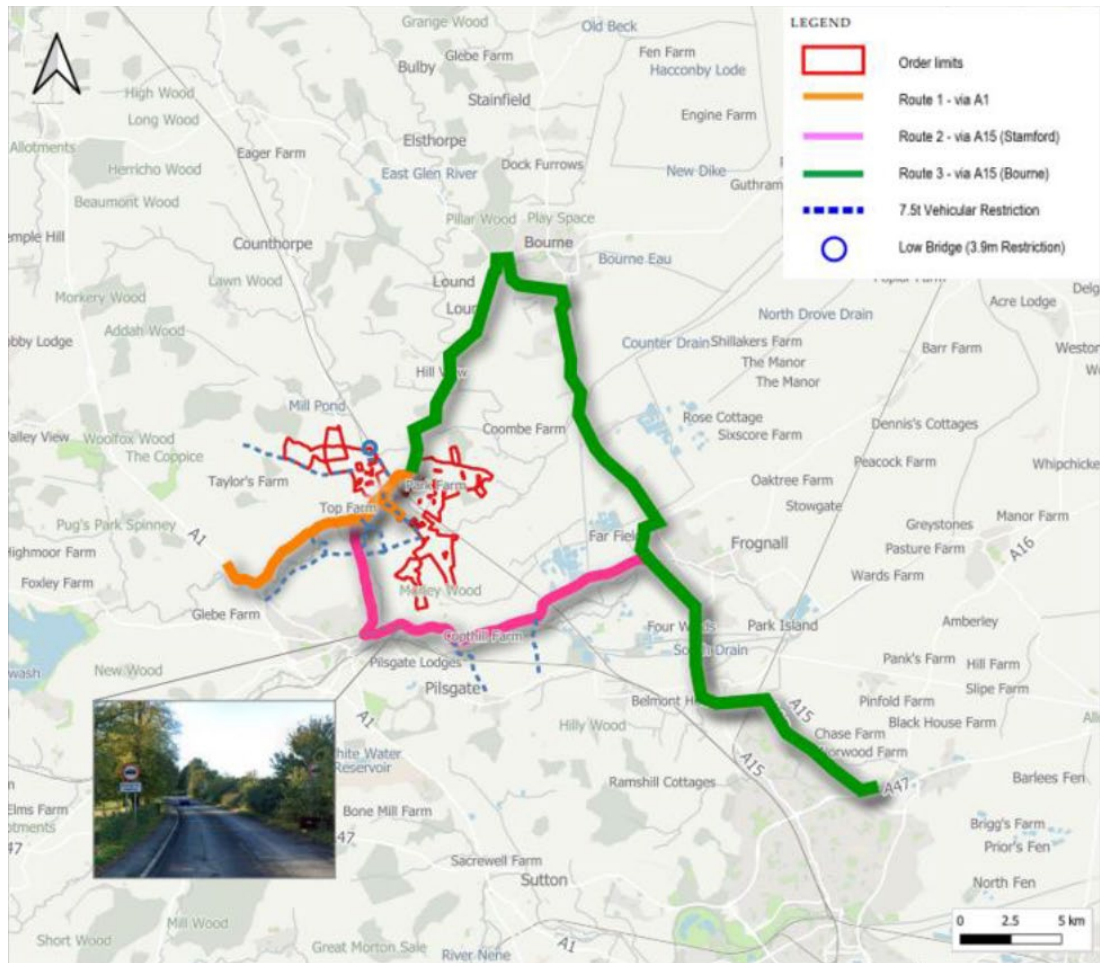
construction compounds alongside other measures such as delivery time restrictions. Appendix F provides swept path analysis of access points and construction routes.

- 3.10.20. Traffic Regulation Measure Plans for temporary measures (speed limits and traffic signals) [[AS-008](#)] and temporary road closures [[AS-007](#)] are provided to identify the corresponding measures listed in Schedule 8 of the DCO. Access and Rights of Way Plans [[REP7-006](#)] as updated at Deadline 7 identify new or altered access points to the highway, permanent or temporary alterations to streets, street works and PRoW.

Baseline conditions

- 3.10.21. The Strategic Road Network (SRN) within proximity of the Proposed Development includes the A1 located 6km to the west of the centre of the Order limits. The A47 lies to the south of the Order limits passing through Peterborough and is accessed via the A15 or A1175.
- 3.10.22. The TA identifies a bus network in the vicinity with hourly services to Grantham, Bourne and Peterborough with the nearest bus stop being located in Essendine. Whilst the East Coast Mainline Railway bisects the Order limits, the nearest passenger railway station is in Stamford approximately 7.4km from Essendine.
- 3.10.23. The A6121 passes through the Order limits connecting Ryhall, Essendine and Carlby. The B1176 passes through the Order limits to the west. Uffington Lane runs along the edge of the Order towards the centre of the Proposed Development.
- 3.10.24. Baseline and future baseline traffic flows for the years 2021 and 2026 respectively are provided in Appendix 9.5 of the ES for flows on three potential routes between the SRN and the primary construction compound within the Order limits. Agreement was reached with National Highways, RCC and LCC in relation to the traffic surveys which are deemed representative of typical traffic conditions.
- 3.10.25. The construction routes considered are illustrated in Figure 3.1 of the updated outline CTMP [[REP7-023](#)] and are replicated below for convenience.

Figure 6: Construction traffic routes overview



3.10.26. In agreement with National Highways, baseline flows for the SRN are not recorded as traffic from the Proposed Development falls below the peak hour threshold for assessment.

3.10.27. A network of PRow including bridleway BrAW/1/1 and bridleway E169/1 pass through the Order limits and the surrounding area. A Byway Open to All Traffic (BOAT) known as “The Drift” passes along the western edge of the Order limits. In addition, roadside footways are present along the A6121 through Essendine, Ryhall and on Ryhall Road through Great Casterton. A shared footway and cycleway runs adjacent to the A6121 between Essendine and Great Casterton.

Embedded mitigation

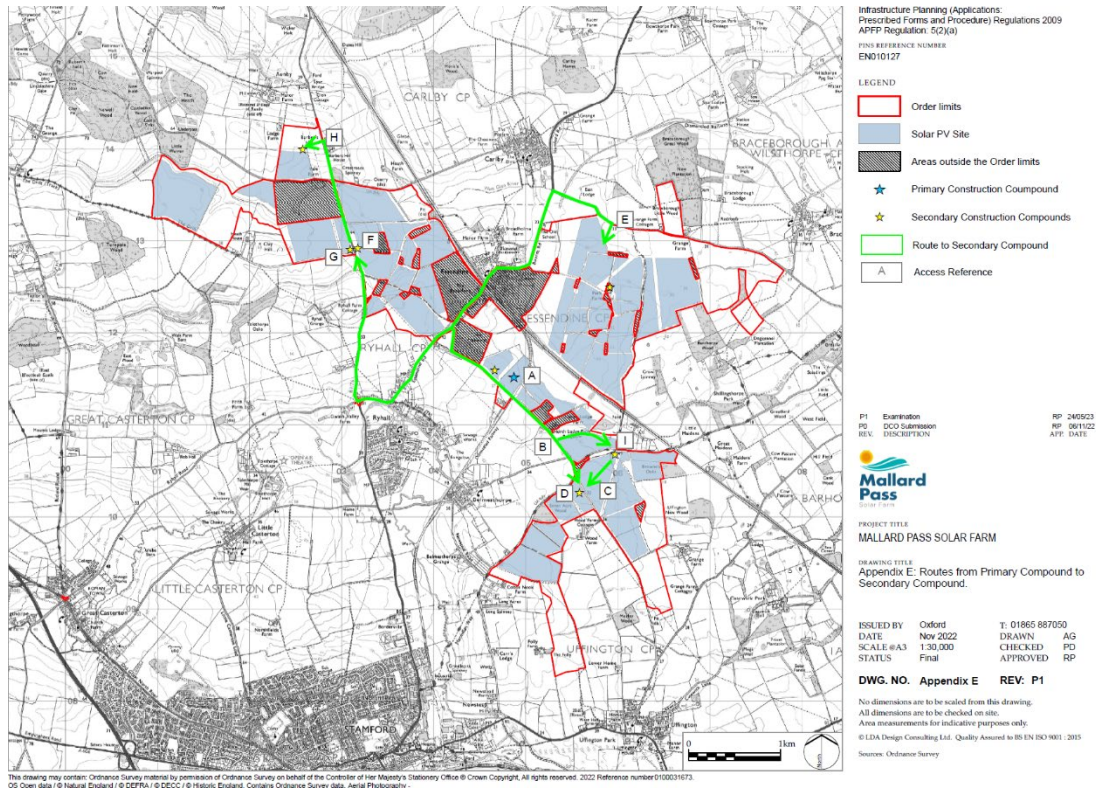
3.10.28. Chapter 9 of the ES summarises mitigation embedded into the Proposed Development, including:

- Access locations identified in the outline CTMP following a review of road network to provide sufficient HGV access and visibility splays. Existing access points have been utilised where possible to minimise environmental effects.

- A central primary construction compound for deliveries located off Uffington Lane is intended to reduce the need for larger deliveries to impact the wider road network. Deliveries to secondary compounds across the Order limits using smaller vehicles via the local road network as well as internal access routes to minimise effects and the likelihood of two construction vehicles passing each other. Details are set out in the outline CTMP.
- HGV construction traffic would only use designated access routes as specified in the outline CTMP and secured under Requirement 13 of the DCO [[REP9-005](#)]. As agreed with RCC and LCC, HGVs should enter the Order limits via Route 1 to deliver to the primary construction compound and then depart via Route 3. LGVs are not subject to restriction and the TA assumes that they could use Routes 1, 2 and 3 evenly. The route has been informed by proximity to the SRN that would connect to the source of materials and presence of weight restrictions or geometric constraints.
- Four new permissive paths are proposed within the Order limits to improve permeability for non-motorised users (NMU) as set out in the outline LEMP [[REP7-021](#)].
- Highways improvements within the Order limits including the permanent widening of the junction of the A1621 and Uffington Lane and temporary passing places on Uffington Lane to facilitate two-way HGV traffic as set out in the outline CTMP. Temporary works to facilitate the movement of Abnormal Indivisible Loads (AIL) are also proposed in Great Casterton and Ryhall. This includes the reinforcement of kerbs and the relocation of street furniture that would be reinstated after AIL movements have been completed.
- An outline Travel Plan [[APP-215](#)] outlines plans for a staff shuttle bus to transport staff from the primary construction compound across the Order limits alongside other measures to encourage sustainable transport use.

3.10.29. The location of the primary and secondary construction compounds, related access points and designated routes to the secondary compounds are identified in Appendix E of the updated outline CTMP [[REP7-023](#)] and provided below.

Figure 7: Routes from primary construction compounds to secondary construction compounds



Transport Assessment

- 3.10.30. A Stage 1 Road Safety Audit is summarised in section 4.4 of the TA [APP-074] that considered proposed access junctions and proposals along Uffington Lane. In response to the audit, one access point was moved to improve visibility, measures to ensure that hedgerows and verges to not impinge on visibility splays at access points (as referenced in the outline LEMP). In addition, signage, banksmen and driver training would be implemented to manage road space in the vicinity of passing places on Uffington Lane.
- 3.10.31. In terms of trip generation during the operational phase, the TA states that there would typically be up to four permanent staff onsite with additional staff attending when required for maintenance, replacement of solar equipment and cleaning, up to a total of 20 staff per day. A worst case scenario of 40 two daily two-way trips is referenced with vehicles mostly being cars and vans. This is deemed negligible and therefore not assessed.
- 3.10.32. During construction, the TA states that it is expected that an average of 100 to 150 workers would be present onsite up to a maximum of 400. The Proposed Development is estimated to generate up to 54 two-way daily HGV trips and 105 two-way daily LGV trips during construction. Trip rates are informed by comparable NSIP solar farm projects.

Outline Construction Traffic Management Plan

- 3.10.33. The outline CTMP as submitted [[APP-212](#)] specifies that HGV deliveries are limited to mornings up until 1pm on Saturdays. To mitigate the potential impacts on HGVs on local schools within Great Casterton, the outline CTMP proposed to avoid deliveries during school start and end times. Accordingly, it proposed to restrict HGV deliveries between 9am and 3pm Monday to Friday.
- 3.10.34. A temporary construction car park with provision for 150 spaces is proposed within the primary construction compound with the intention that staff would be transported from there to the construction site via a shuttle bus. Car parking may be relocated to other parts of the Order limits as specified within future iterations of the CTMP.
- 3.10.35. The primary construction compound is proposed to benefit from a 10.2m width carriageway to enable two-way access the access. Access tracks to secondary compounds would have a 6.5m wide carriageway with a gate located 20m from the edge of the public highway to enable vehicles to pull off the highway and wait before entering the Order limits. Visibility from each access point would be provided in accordance with the Design Manual for Roads and Bridges.
- 3.10.36. Routing for Abnormal Indivisible Loads is to be agreed with the local authorities prior to construction but is expected follow Route 1.
- 3.10.37. Temporary speed limit restrictions of 20mph are proposed on the A6121 through Essendine and 30mph in other locations as identified in the updated Traffic Regulation Measures Plans [[REP7-007](#)].
- 3.10.38. A Transport Coordination Officer would be appointed to oversee and monitor the CTMP. Findings would be reported to a Traffic Management Working Group as detailed in Section 5 of the outline CTMP. As updated during the Examination, the group would comprise of representatives from RCC, LCC, SKDC, parish councils, National Highways and a Community Liaison Officer. The group would also discuss and review mitigation measures in the final CTMP.

Summary of effects

- 3.10.39. Appendix 9.6 of the ES [[APP-076](#)] provides details of the expected levels of construction traffic (total number of vehicles and HGVs) in 2026, including the percentage uplift on potential construction Routes 1, 2 and 3 as well as for the B1176 and Carlby Road. Uffington Lane that provides access to the primary construction compound is expected to experience a 48% increase in total vehicles and a 167% increase in HGVs although it is noted that this increase is from a low baseline. A 20% increase in HGVs on Carlby Road is also predicted with a 2% increase in total vehicles. An 11% increase in HGVs is expected on Ryhall Road West. All other links are expected to experience between 10% and 0% increases in HGVs and between 2% and 0% for total vehicles.
- 3.10.40. Potential effects arising identified in the Section 9.6 of ES for relate to NMU of PRow, footways and the local road network as well motorised users of the local road network, including Uffington Lane.

- 3.10.41. In relation to cumulative effects Section 9.10 of the ES cross refers to Chapter 16 of the ES (Interactions of Effects and Summary of Cumulative Effects) [[APP-046](#)]. They state that there are no cumulative developments identified with the potential for cumulative effects due to the limited overlap in construction programmes and construction routing.
- 3.10.42. Table 9-4 of the ES provides a summary of effects during the construction and decommissioning phase. Whilst some adverse are identified, they are considered by the Applicant to be local, temporary and non-significant:
- During the construction phase, all residual effects relating to severance, driver delay, pedestrian delay, fear and intimidation and accidents and safety are deemed to be negligible (non-significant).
 - During the decommissioning phase, all residual effects relating to severance, driver delay, pedestrian delay, fear and intimidation, accidents and safety and hazardous loads are deemed to be negligible (non-significant).
- 3.10.43. The Applicant's consideration of the implications of the sixty year operational time limit [[REP7-038](#)] reiterates that the operational effects were scoped out of Chapter 9 of the ES as it was considered that traffic impacts would be non-significant. As such, the introduction of a 60-year time limit does not change this conclusion.

Issues arising during the Examination

Local Impact Reports

- 3.10.44. RCC's LIR [[REP2-048](#)] states that primary impacts from the Proposed Development would arise during the construction phase. Negligible impacts during the operational phase are noted due to the number of trips and size of vehicles expected. It considers that decommissioning can be addressed at a later stage to allow for potential changes to highways over the operational period.
- 3.10.45. The LIR considers that the routing strategy for construction vehicles would reduce impacts but that some would remain. Junction improvement works are considered to be necessary but it is accepted that works can be undertaken safely with temporary traffic signals that would result in some delays.
- 3.10.46. Concerns are identified regarding the potential number and size of vehicles using Ryhall Road, Great Casterton during school start and finish times. As such, the restrictions identified in the outline CTMP for delivery times are deemed essential. Effects of the construction route with the implementation of measures in the outline CTMP are considered to be neutral. However, it sought clarification on provision for construction traffic management in the event that HGVs are delayed due to accident related closures on the A1. This may necessitate HGVs to wait somewhere to avoid conflict with delivery time restrictions as specified in the outline CTMP.

- 3.10.47. Effects in terms of traffic generation are also deemed neutral with agreement having been reached regarding assessment methodologies and the implementation of the outline CTMP and Travel Plan.
- 3.10.48. Concerns regarding the access to a secondary construction compound at the junction of the Drift with the B1176 are identified in terms of highway safety and RCC request that the relocation of this access be considered. Impacts for all other access points are considered to be low.
- 3.10.49. Subject to further details being agreed prior to construction, provision for parking and turning is not expected to result in negative impacts.
- 3.10.50. Potential impacts relating to the over-running of verges from HGVs is considered to range from negligible to high depending on the location. However, with measures proposed impacts such as passing points and road widening, impacts are considered to be negligible. Remedial works following a post-completion highway survey are also required.
- 3.10.51. LCC's LIR [[REP2-044](#)] also considers the primary impact from the Proposed Development to relate to the construction phase. The LIR confirms that the construction traffic route has been agreed by LCC and is considered to lessen impacts. Construction hours and HGV and LGV forecasts are agreed.
- 3.10.52. Details of works to improve the junction of the A6121 and Uffington Lane as identified in the outline CTMP would to be agreed as would temporary road closures, speed limits and traffic signals.
- 3.10.53. Pre-commencement and post-completion surveys for local highways would be required along with remedial work to be undertaken by the Applicant.
- 3.10.54. Overall, negative impacts related to traffic increases, disruption and highways works are not expected to give rise to unacceptable impacts on highways safety or a severe residual cumulative impact on highway networks in Lincolnshire, subject to measures secured by Requirement being implemented.
- 3.10.55. SKDC's LIR [[REP2-051](#)] notes that the operational phase has been scoped out of the ES and that an outline CTMP is provided. Concerns regarding traffic generation in relation to effects on road users and the local community are identified. SKDC call for the local highway authority to play a leading role in a developing and a traffic management strategy to mitigate effects and for measures to be secured.

Position of the Local Authorities at the end of the Examination

- 3.10.56. At the close of the Examination, RCC welcomed additional clarity and restrictions proposed in relation to HGV delivery times and impacts on schools in Great Casterton. Details in the updated outline CTMP [[REP7-023](#)] are agreed as identified in the SoCG [[REP9-022](#)] as well as a negligible impact from operational traffic.

- 3.10.57. Concerns regarding the junction with the Drift and B1176 as identified in the LIR are addressed.
- 3.10.58. RCC and the Applicant also agree to the principle of taking forward a separate agreement that replicates a s278 agreement process to address concerns regarding highways works approvals and bookings. However, at the close of the Examination, the wording of the agreement had not been agreed.
- 3.10.59. Agreement on the principle of such side agreement between LCC and the Applicant is also reached but again the final wording is not determined [[REP9-020](#)]. LCC also confirm that the updates to Articles 9, 10 and 13 of the DCO [[REP9-005](#)] now ensure that powers conferred cannot be exercised without consent of the highway/street authority in a form to be reasonably required by the highway/street authority which provides LCC with sufficient confidence that they can be controlled. No outstanding areas of disagreement are identified in the SoCG.
- 3.10.60. The Applicant confirms in its Closing Summary Statement [[REP10-013](#)] that it intends on completing the side agreements with RCC and LCC with a view to completing them in time to update the SoS that this has occurred prior to a decision being taken on the application.
- 3.10.61. LCC agree to the commitments in outline CTMP as does RCC [[REP9-021](#)]. SKDC noted the changes made by the Applicant to the outline CTMP and provided no further comments [[REP9-021](#)].

National Highways

- 3.10.62. An SoCG between the Applicant and National Highways was agreed prior to the commencement of the Examination [[PDA-101](#)]. This confirms agreement between the two parties that impacts on the SRN are likely to be negligible during the operational phase and that the construction phase reflects a worst-case scenario for the decommissioning stage. As such, trip rates are considered acceptable and junction capacity assessments are not required.
- 3.10.63. The ExA sought clarification (ExQ2 11.0.6) from the Applicant on whether National Highway's A47 Wansford to Sutton scheme that was granted consent by the SoS in February 2023 had been taken into account in relation to cumulative effects. The scheme lies approximately 7 miles to the south of Stamford and connects to the A1.
- 3.10.64. National Highways was also invited to provide an indication of the likely construction programme for the A47 scheme as well as confirming if it considered that there could be any implications during the construction or operational phase of the Proposed Development for its scheme.
- 3.10.65. Following responses from the Applicant [[REP5-012](#)] and National Highways [[REP5-035](#) and [REP5-036](#)] subsequent discussion at ISH4 [[REP7-036](#)], the Applicant updated the outline CTMP [[REP7-023](#)]. This now ensures coordination with Peterborough City Council or other relevant authorities should diversions on the SRN take place in support of

the A47 scheme. This would account for a situation where the construction programmes for the Proposed development and the A47 scheme overlap, even if this is currently not expected. The ExA is satisfied that this is a suitable solution.

Effects during the operational phase

- 3.10.66. The absence of an assessment of effects in ES during the operational phase was subject to scrutiny in ExQ1 11.0.4 [[PD-008](#)], ExQ2 5.0.1 and ExQ11.0.9 [[PD-014](#)] and ISH4 [[REP7-036](#)].
- 3.10.67. Paragraphs 9.3.2 – 9.3.4 of the ES [[APP-039](#)] explains that operational effects have been scoped out of the ES based on a worst-case scenario that 20 staff arrive and depart the order limits by car each day. However, it was unclear to the ExA if there would be any effects arising from maintenance activities such as the replacement of PV panels and supporting infrastructure that may require HGVs or abnormal loads. In particular, the ExA sought clarity on the potential for this to occur in the event of a large-scale replacement of PV panels during the operational phase that would be comparable to, or even exceed, the number of trips due to the need to both remove and deliver PV panels and equipment.
- 3.10.68. The Applicant explained that large scale replacement of panels was not intended and that such works would be undertaken on an “ad hoc basis” as indicated by the parameters of the operational phase set out in section 5.17 of the ES [[REP2-012](#)]. As such, significant effects were unlikely.
- 3.10.69. Abnormal loads would be infrequent and could be planned for in the usual manner as agreed by LCC [[REP2-045](#)] and RCC [[REP2-050](#)].
- 3.10.70. However, in order to quantify “ad hoc” and help to ensure that maintenance activities could not cause materially new or materially different environmental effects than those reported in the ES as specified in Article 5 of the DCO [[REP9-005](#)], the Applicant updated the outline OEMP at Deadline 5.
- 3.10.71. The final outline OEMP [[REP10-006](#)] now states that the Applicant must provide accompanying environmental and traffic information to the local authorities to confirm that the planned maintenance activities do not cause such effects and that the activities are consistent with section 5.17 of Chapter 5 of the ES. Specifically, the traffic information supplied must provide confirmation that there would be no more than five daily two-way HGV movements a day for the planned maintenance activities.
- 3.10.72. This threshold is based upon IEMA guidelines for the Environmental Assessment of Traffic and Movement (2023) which states that a 10% change in HGV flows to require inclusion within an EIA. Uffington Lane has the lowest baseline HGV flows at 48 and has therefore been used to set the threshold. As such, higher flows than five daily two-way movements would trigger the need to undertake an additional ES.

- 3.10.73. It is noted that MPAG have concerns that controls to limit HGV movements may not be adhered to with little resources available for monitoring and enforcement of such measures.
- 3.10.74. This restriction could have implications for the length of time that any significant maintenance programme may take. MPAG explained at ISH4 [[REP7-057](#)] that it has calculated that it would take over 200 days to replace all of the panels alone and that such works were likely given the 60-year time operational period. As such, MPAG considered that the Applicant would need to substantially exceed the parameter set of five two-way HGV movements per day.
- 3.10.75. However, the Applicant's position is that any maintenance works would be undertaken on an ad hoc basis and this has now been quantified within controls specified in the outline OEMP and secured by Requirement 12. Furthermore, there is currently no evidence that would suggest that an increased frequency of HGV movements during the operational phase would be essential for maintenance purposes.
- 3.10.76. It is also standard practice for such controls to be detailed in a management plan which is secured by requirement in a DCO as is the case for the Proposed Development. A breach of a DCO is an offence. Accordingly, the ExA considers that with the updated OEMP, suitable safeguarding is in place to ensure that no materially new or materially different environmental effects than those reported in the ES would arise.
- 3.10.77. It is noted by the ExA that the measures specified in the outline CTMP to manage traffic during the construction phase do not apply to the operational phase. As discussed further in Chapter 7, we have recommended an alteration to Requirement 12 (OEMP) of the final draft DCO [[REP9-005](#)] to ensure that the detailed OEMP includes details of HGV routes during operation in order to prevent any effects arising from the use of unsuitable routes.

Construction traffic routing and delivery times

- 3.10.78. Whilst the construction traffic route for HGVs had been agreed with RCC and LCC as the local highways authorities, some IPs including Great Casterton Parish Council [[REP2-060](#)] and MPAG [[REP2-090](#)] questioned its suitability in terms of highway safety and disruption in particular. Route 1 as identified for HGV in the outline CTMP passes two schools in Great Casterton.
- 3.10.79. In response to ExQ1 1.0.19, SKDC [[REP2-052](#)] sought clarification on the ability of the junction of Ryhall Road and the A6121 to accommodate the turning of a 16.5m articulated lorry without creating highway safety issues and whether the routes would be known to delivery drivers with a risk of unsuitable alternatives being used instead. Greatford Parish Council also expressed concern regarding the potential for non-compliance with the designated routes and scope for construction traffic to divert through the village of Greatford.

- 3.10.80. However, the Applicant explained that in the event of road closures due to unforeseen circumstances, HGVs would utilise alternative routes. For instance, if access via Route 1 is unavailable, Route 3 would be utilised in conjunction with traffic management measures such as the use of tidal deliveries or “platooning” to avoid two-way conflicts as specified in the outline CTMP.
- 3.10.81. SKDC also questioned the ability of local roads to accommodate vehicles travelling between the primary and secondary compounds on local roads without creating problems for other road users.
- 3.10.82. In response, the Applicant pointed to the swept path analysis of the junctions presented in Appendix E of the outline CTMP [REP7-023] that demonstrate no conflict with turning vehicles. Additional drawings were also included in Appendix F to illustrate the scope for a tractor and large trailer travelling between the primary and secondary compounds to pass a large car travelling in the opposite direction. All areas were deemed to be suitable with the exception of Uffington Lane where mitigation was already proposed in the form of passing places and junction widening.
- 3.10.83. More generally, the Applicant highlighted the negligible increase in traffic flows on most routes and absence of accident hotspots as identified in the ES as well as agreement with the local highway authorities in respect of the assessment methodology and routing approach.
- 3.10.84. In relation to potential conflict with schools and following further scrutiny by the ExA at ExQ1 (question 11.0.2) [REP2-037] and at ISH2 [REP4-041], the Applicant revised the controls regarding HGV delivery times in the outline CTMP. To further reduce the risk of HGVs avoid school drop off and pick up times in Great Casterton, Section 3.8 of the document now restricts HGVs from passing through Great Casterton prior to 9am and after 3pm. This restriction is supported by RCC as the local highway authority for Great Casterton as well as by MPAG [REP10-024].
- 3.10.85. The ExA also considers the updated outline CTMP to be appropriate in this regard with the updates providing further reassurance that conflict with school trips is minimised. The swept path analysis demonstrates that local roads can satisfactorily accommodate likely vehicle movements between compounds and suitable outline measures are identified to manage construction traffic in the event of road closures.

Construction compound access points and parking

- 3.10.86. RCC’s LIR [REP2-048] stated that the proposed access to the Order limits at the junction of the Drift with the B1176 would result in a high negative impact due to concerns relating to highway safety. Mr Gresty raised similar concerns [REP2-160].
- 3.10.87. The Applicant clarified at Deadline 3 [REP3-034] that a Stage 1 Road Safety Audit was carried out concerning the junction as set out in Appendix 9.4 of the ES [APP-074]. As a result, hedgerows and verges would be subject to regular maintenance and inspection during construction to maintain visibility splays as set out in Section 4.2 of the

outline LEMP [[REP7-021](#)]. Following further communication with RCC on this matter, it confirmed that its concerns had been addressed.

- 3.10.88. In response to a concern from RCC that vehicles seeking access to the secondary construction compounds may need to undertake reversing manoeuvres in the public highway, the outline CTMP [[REP7-023](#)] now also includes a statement that each compound must provide additional and adequate space for the largest anticipated vehicle to enter in forward gear, turn within and leave the compound in forward gear. Detailed plans demonstrating that this is achievable would be provided within the CTMPs.
- 3.10.89. In relation to construction staff parking, concerns were raised by SKDC [[REP2-052](#)] and MPAG [[REP2-090](#)] that the number of spaces to be provided within the primary construction compound (150) falls short of the maximum number of staff expected on site (400) with the potential for overspill on to the surrounding roads. The ability of the primary and secondary compounds to accommodate sufficient parking spaces and traffic implications of staff commuting trips was also questioned.
- 3.10.90. These issues were subject to scrutiny at ISH2 [[REP4-041](#)], ExQ1 11.0.9 [[REP2-037](#)] and ExQ2 11.0.3 [[REP5-012](#)]. The Applicant identified measures in the outline Travel Plan [[REP5-073](#)], including the provision of a shuttle bus from the primary construction compound to areas of construction as well as a commitment to investigate the feasibility of providing shuttle bus services to the primary compound itself from public transport connections or places where construction staff reside or are accommodated. Cycle parking and the promotion of alternative modes of travel would be undertaken. Staff trips would also be undertaken outside of peak hours as controlled by the CTMP thus minimising traffic impacts.
- 3.10.91. Details would be confirmed in the detailed Travel Plan once further information was known about construction staffing. The precise locations of further temporary parking would be confirmed at the detailed design stage and subject to agreement of the local authorities as secured by Requirement 13 (CTMP).
- 3.10.92. In addition, updates to the outline CTMP now make it clear that parking would only be permitted within the Order limits at the primary construction compound, secondary compounds and/or any temporary areas specifically created for parking to take place, which would be confirmed by the principal contractor within later iterations of the CTMP. To help avoid damage to ecologically sensitive road-side verges in the vicinity, the document also explicitly prohibits parking on verges adjacent to the highway. This would be monitored by the principal contractor and the Traffic Management Working Group.
- 3.10.93. We are satisfied that matters relating to parking and construction compound access are suitability addressed with the updates provided by the Applicant. We note that there are no outstanding concerns from the local authorities regarding the outline CTMP. However, the local

authorities would need to closely scrutinise the proposals at the detailed design stage under Requirement 13 to ensure that they are satisfactory.

Traffic management and safety

- 3.10.94. Disruption and road safety concerns arising construction traffic were identified by several IPs including RCC [[REP2-048](#)], MPAG [[REP2-090](#)], Essendine Parish Council [[REP2-057](#)], Great Casterton Parish Council [[REP2-060](#)], Greatford Parish Council [[REP2-061](#)], Braceborough and Wilsthorpe Parish Council [[REP2-054](#)], Ryhall and Belmesthorpe Parish Council [[REP2-064](#)] as well local other local residents.
- 3.10.95. The safety risk to children, the elderly and other vulnerable people as well as pedestrians, cyclists and horse riders wishing to cross or use highways was identified. In response, the Applicant [[REP3-034](#)] pointed to the findings of Chapter 9 of the ES which concludes that the impacts of the Proposed Development would be negligible and that there are no existing collision clusters or hotspots around the Order limits. It also drew attention to the range of mitigation measures such as designated HGV routes and temporary Traffic Regulation Measures. Traffic increases are also identified as being generally low with the exception of Uffington Lane.
- 3.10.96. We sought further information (ExQ1 11.0.1) on the number of pedestrians and cyclists that use Uffington Lane. Paragraph 9.6.29 of the ES indicated that whilst there may be some recreational use of this link by pedestrians and cyclists, it would be on an ad hoc basis and outside of construction working hours. RCC stated that whilst no formal data was available, anecdotal evidence suggested that Uffington Lane was well used by cyclists, particularly at weekends. We note that this would include on Saturday morning when construction activity is permitted.
- 3.10.97. The Applicant's responded [[REP2-037](#)] with data for cyclists on Uffington Lane taken from counts in the week commencing 11th October 2021, indicating daily flows between 7 and 17. No increase was counted at weekends. The Applicant deemed this level of demand to be low. No data was available for pedestrians or horse riders but a low demand was also expected. Given the low demand on and the provision of permissive paths that provide alternative recreational routes, the Applicant considered that there would be no significant impact on cyclist and pedestrian amenity.
- 3.10.98. As highlighted in Section 3.9 of this report, the ExA would question the extent to which the permissive paths would be utilised by pedestrians, horse riders and cyclists when the ground is not dry. Nevertheless, based on the evidence before us, whilst there may be some residual harm, the ExA concurs with the Applicant's conclusions of no significant effects.
- 3.10.99. Disruption to vehicular and pedestrian access to homes and businesses arising from the potential need to lay cabling along the A6121 through Essendine as well as related safety concerns for pedestrians attempting to cross the road were considered in CAH1, CAH2 and ExQ2 (question

11.0.11). Essendine Parish Council [[REP2-057](#)] and Essendine Village Hall [[REP5-029](#)] in particular identified such issues.

- 3.10.100. At ISH4 [[REP7-036](#)], in response to a question from the ExA, the Applicant clarified that the temporary Traffic Regulation Measures through Essendine proposed a reduction in the speed limit from 30mph to 20mph. Speed limits elsewhere within the Order limits would be reduced to 30mph.
- 3.10.101. The speed limits would also be accompanied by temporary traffic signals. The Applicant's position in response to ExQ2 was that whilst there are no existing signal-controlled pedestrian crossings on the A6121 in Essendine, the temporary measures would facilitate the safe crossing of the road as traffic would be slowed down and stopped, creating a larger window for pedestrians to cross.
- 3.10.102. In addition, the Applicant updated Table 3-4 of the outline CEMP [[REP8a-006](#)] to ensure that vehicular and pedestrian access to homes and businesses is maintained at all times with the exception of when the trenches for cable works are being constructed or reinstated directly in front of a property. This includes Essendine Industrial Estate that includes three active Upper Tier Control of Major Accident Hazards (COMAH) sites.
- 3.10.103. Appendix 1 of the outline CEMP provides the Terms of Reference for a Community Liaison Group that would provide a forum to discuss any local issues relating to the construction phase, including traffic management. Matters also discussed by the Traffic Management Working Group. The Community Liaison Group's membership would include an appointed Community Liaison Officer as well as representatives from the Applicant, MPAG, local MPs, RCC, LCC and SKDC as well as parish councils in the area.
- 3.10.104. Temporary coverings would be installed over trenches where necessary. The Community Liaison Officer would notify affected residents and businesses in advance to allow any special access requirements that may determine the type of covering to be identified. Article 15 of the DCO also requires that before exercising traffic regulation powers, the Applicant must give at least four weeks notice to the relevant police force and traffic authority.
- 3.10.105. Elsewhere, in response to concerns raised by Mrs Helen Woolley, the Applicant confirmed following CAH2 [[REP7-035](#)] that access to Mrs Woolley's property on the B1176 would be maintained but that temporary speed limits and traffic signals may be required to facilitate the removal of hedgerows.
- 3.10.106. Greatford Parish Council [[REP2-061](#)] and MPAG [[REP2-090](#)] expressed concern about the potential wider implications of Temporary Traffic Regulation measures on the A6121 through Essendine with traffic diverting along alternative unsuitable road through Greatford, Carlby and Belmesthorpe. The Applicant explained at Deadline 3 [[REP3-034](#)] that the

Chapter 9 of the ES included sensitivity testing of the impact of cabling works on Uffington Lane and the resultant impact on the A6121. The scope for minor delays was acknowledged but they are considered by the Applicant to be short term and temporary in nature and therefore non-significant.

- 3.10.107. Having considered all of the above, the ExA is satisfied that the updated Traffic Regulation Measure, outline CEMP and outline CTMP provide sufficient controls to address traffic management and safety.

Condition surveys and remedial works

- 3.10.108. Damage to highways and PRow arising from construction was identified an issue by RCC in its LIR [[REP2-048](#)] as well as by other IPs. RCC recommended that detailed pre-commencement and post-completion surveys should be secured by requirement along with remedial work.

- 3.10.109. The outline CTMP details (as secured by Requirement 13) that condition surveys for both highways and PRow would be undertaken before and after construction on routes affected by construction traffic or cabling works. The scope of surveys would be agreed with the local highway authorities in advance of construction and the Applicant would repair damage arising from the works.

- 3.10.110. Signage or further remedial measures would also be implemented following liaison with RCC in the event that construction worker traffic was leading to impacts to the Ryhall Pasture and Little Warren Verges SSSI along Holywell Road.

- 3.10.111. The measures are considered to be appropriate and adequately secured by the ExA. RCC and LCC do not identify any residual concern.

Conclusions

- 3.10.112. The Applicant's ES and supporting TA have followed the guidance and been informed by liaison with National Highways and local highway authorities as required by 2011 EN-1. An assessment of effects during the operational phase was scoped out. As such, the Applicant has not explicitly assessed suitability of access routes during operation as well as construction or included the full extent of access routes necessary for operation as envisaged by 2023 draft EN-3.

- 3.10.113. However, with the controls specified in the outline OEMP to limit HGV movements to no more than five daily two way HGV movements for the planned maintenance activities as well as the need to report to the local authorities, the ExA is satisfied that no significant effects would arise in line with the Institute of Environmental Management and Assessment (IEMA) 'Environmental Assessment of Traffic and Movement' (2023) criteria of proposals not leading to more than a 10% change in daily HGV flows. Draft EN-3 also recognises that the construction phase is more likely to raise issues. Nevertheless, the local authorities may wish to consider the need for clarification of HGV routing during the operational

phase at the detailed design stage in the context of paragraph 3.10.24 of 2023 draft EN-3.

- 3.10.114. An updated outline Travel Plan and CTMP alongside embedded mitigation are provided that specify measures to mitigate the effects of the Proposed Development and to manage demand as envisaged by EN-1. Measures include a designated HGV construction traffic route, parking and measures to manage effects on public roads.
- 3.10.115. In line with 2023 draft EN-3, access routes during construction are identified and assessed with consideration also given to the extent to which roads can accommodate the volume of loads and width of vehicles. Cumulative effects are also considered.
- 3.10.116. The 2023 draft EN-1 states that the SoS should not withhold consent if requirements can be imposed to mitigate effects and that refusal on highways grounds where there would be unacceptable impacts on highways safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.
- 3.10.117. The ExA considers that there is not a case for refusal of the Proposed Development on transport matters in these terms. Mitigation proposed is secured by requirement and subject to local authority approval at the detailed design stage.
- 3.10.118. We consider that the Proposed Development would broadly align with policies in the NPPF and the local development plan.
- 3.10.119. Overall, we are satisfied that that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in combination with other developments. We consider this to be neutral in the overall planning balance.

3.11. WATER AND FLOOD RISK

Introduction

- 3.11.1. This section considers the Proposed Development in terms of water resources and potential flood risk, including surface water run-off.

Policy background

National Policy Statements

- 3.11.2. Section 5.7 of the 2011 EN-1 provides policies relating to flood risk. Paragraph 5.7.4 states that the Applicant's FRA should identify and assess risks of all forms of flooding to and from the project and demonstrate how these risks would be managed taking climate change into account.
- 3.11.3. The minimum requirements for an FRA are specified in paragraph 5.7.5 of 2011 EN-1. These include the need to state the lifetime of the

development over which the assessment has been made and to consider how the ability of water to soak into the ground may change with development. Paragraph 5.8.15 of the 2023 draft EN-1 adds further details for the requirements for an FRA including the need to explain how run-off from the completed development would be prevented from causing an impact elsewhere.

- 3.11.4. Paragraph 5.7.9 of 2011 EN-1 states that the decision maker should be satisfied that a Sequential Test has been applied as part of the site selection. A sequential approach should also be applied at the site level to minimise risk by directing the most vulnerable uses to the lowest areas on flood risk. Essential energy infrastructure which has to be located in flood risk areas should be designed to remain operational when floods occur.
- 3.11.5. If there is no reasonably available site in Flood Zone 1 or 2, energy NSIP projects can be located in Flood Zone 3, subject to the Exception Test.
- 3.11.6. Paragraph 5.7.16 states that for the Exception Test to be passed, it must be demonstrated that the development; provides wider sustainability benefits to the community that outweigh flood risk (including the need for the development) and is on previously developed land, or if not, that there are no reasonable alternative previously developed sites. Finally, the FRA should demonstrate that the project would be safe, without increasing flood risk elsewhere.
- 3.11.7. Exceptionally, the decision maker may grant consent where flood risk elsewhere cannot be avoided or wholly mitigated, taking account of the respective risks and benefits.
- 3.11.8. The decision maker must be satisfied that priority has been given to the use of sustainable urban drainage systems (SuDS) with measures including filter strips and swales. Mitigation is required to manage surface water and the impact of the water cycle on people and property. The volume and peak flow rate of surface water should be no greater than the rates prior to the project unless specific off-site arrangements are made and result in the same net effect.
- 3.11.9. The 2011 EN-1 and 2023 draft EN-1 also require the decision maker to be satisfied that the proposed drainage system complies with any National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. The 2023 draft EN-1 requires that the SoS should be satisfied that the most appropriate body is being given the responsibility for maintaining any SuDS, taking into account the nature and security of the infrastructure on the proposed site.
- 3.11.10. Section 5.15 of 2011 EN-1 provides policies relating to water quality and resources. It recognises that development can have adverse effects on the water environment, including groundwater. Discharges, leaks and spills can have impacts on health and ecology and may result in surface

water, groundwater or protected areas failing to meet environmental objectives established under the Water Frameworks Directive (WFD).

- 3.11.11. Where a project is likely to have effects on the water environment, the existing status of water quality, water resources and physical characteristics of the water environment and the impacts of the project on these matters should be considered in the ES. Impacts on water bodies or protected areas under the WFD and source protection zones (SPZ) around potable groundwater abstractions should be taken into account. The 2023 draft EN-1 now also requires consideration of how climate change could impact on these issues.
- 3.11.12. Draft NPS EN-1 encourages applicants to manage surface water during construction by treating run-off from exposed top-soil prior to discharging and to limit the discharge of suspended solids during operation.
- 3.11.13. In terms of decision making, the decision maker should give impacts on the water environment more weight where a project would have an impact on the achievement of objectives in the WFD. It should also have regard to the River Basin Management Plan and ensure that the requirements of the WFD are met.
- 3.11.14. In relation to mitigation, the decision maker should consider whether additional mitigation measures over above those included in the application are needed. Careful design is cited a means of reducing impacts.
- 3.11.15. Paragraph 3.10.75 of 2023 draft EN-3 states that "*as solar PV panels will drain to the existing ground, the impact will not, in general, be significant*". However, the impact on drainage should be considered when an FRA has been submitted alongside the ES. It also states that given the temporary nature of solar PV farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses. Culverting of watercourses should be avoided with any such provision being justified.

National Planning Policy Framework

- 3.11.16. The NPPF broadly reflect the approach to flood risk as set out in 2011 EN-1, including the approach to the sequential test and exception test. Annex 3 of the NPPF sets out the flood risk vulnerability classification and includes solar farms within the definition of essential infrastructure. The associated National Planning Practice Guidance for Flood Risk and Coastal Change provides further details. Table 2 of the guidance clarifies that the exception test is not required for essential infrastructure in Flood Zone 1 and Flood Zone 2.

Development Plan

- 3.11.17. Development plans policies broadly reflect the approach to flood risk and water management taken in both the NPSs and NPPF. Policies of particular relevance include; SKDC Local Plan Policy EN4 (Pollution

Control) and EN5 (Water Environment and Flood Risk Management) as well as RCC's Core Strategy Policy CS1 (Sustainable Development Principles), Policy CS19 (Good Design) and Local Plan Site Allocations Policy SP19 (Biodiversity & Geodiversity Conservation).

Applicant's approach

- 3.11.18. ES Chapter 11 (Water Resources and Ground Conditions) [[APP-041](#)] provides an assessment of likely significant effects on water resources and ground conditions within the Order limits and across a wider catchment. Key issues considered include the potential for soil compaction, surface water runoff and flood risk as well as potential pollution and sedimentation effects.
- 3.11.19. Appendix 11.5 of the ES provides an FRA [[APP-086](#)] which considers flood risk from a variety of sources including fluvial, pluvial, groundwater and reservoirs as well as the application of the sequential and exception tests. It also cross refers to the Surface Water Drainage Strategy (SWDS) [[APP-087](#)] which considers surface water drainage and mitigation for the onsite substation, PV arrays and stations, highways works, foul drainage, potable water and Public Rights of Way drainage.
- 3.11.20. An outline Water Management Plan (oWMP) [[APP-214](#)] describes water management measures during the construction and operational phases to protect water resources. Specifically, it identifies the compliance standards to which the Proposed Development's drainage system and SuDS measures have been designed.

Sequential and Exception Tests

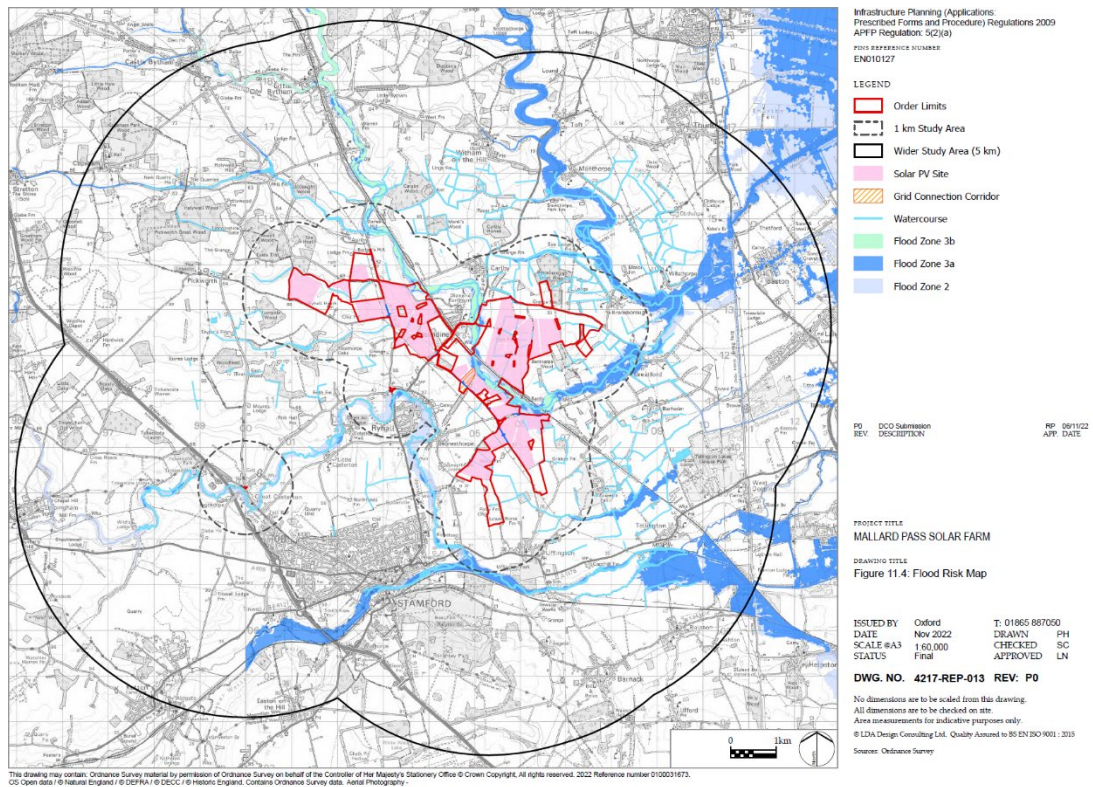
- 3.11.21. Section 4 of the FRA sets out the Applicant's consideration of the Sequential Test and Exception Test. The Applicant explains that the onsite substation is to be located within Flood Zone 1 and is therefore compliant with the test. The PV arrays, associated infrastructure and compounds are also predominantly located in Flood Zone 1 with some minor areas in Flood Zone 2 adjacent to the West Glen River. The Applicant states that this demonstrates sequential design approach to remove the PV arrays from Flood Zone 2.
- 3.11.22. The FRA cross refers to Chapter 4 of the ES (Alternatives and Design Development) [[APP-034](#)] regarding to Sequential Test for the site selection process. It summarises the approach taken to site selection and the conclusion that there are no other potential sites within the proximity of the Order limits entirely with Flood Zone 1 that would be suitable for a large-scale solar farm. In addition, no other substations were identified within the vicinity that could accommodate the Proposed Development without significant upgrade works. For these reasons, the Applicant concludes that the Sequential Test has been met.
- 3.11.23. The FRA highlights Table 2 of the National Planning Practice Guidance for Flood Risk which states that essential infrastructure such as the Proposed development within Flood Zone 2 does not need to apply the Exception Test. However, for completeness, the Section 4.2 FRA makes the case

that the Exception Test has also been met with reasons including the sustainability benefits of the production of renewable energy, the inclusion of measures to manage flood risk and the lack of suitable alternative sites.

Baseline conditions

- 3.11.24. A core study area covering the Order limits and a wider study area of 5km around the core area are defined in Figure 11.1 [APP-195]. The ES explains that distances beyond 5km in solar farm projects in lowland areas are unlikely to contribute towards any hydrological effect. A smaller 1km study area is also identified to assess effects on private and public water supplies.
- 3.11.25. The West Glen River bisects the centre of the Order limits flowing from the north-west, south then eastwards towards the River Welland. The river is culverted under the East Coast Mainline railway. The River Gwash is located approximately 50m south of the Order limits and drains into the River Welland outside of the Order limits. The East Glen River is located immediately to the north-east of the Order limits before flowing south and joining with the West Glen River. An unnamed potentially modified watercourse is located in the north-west of the Order limits and a pond (approximately 17,000m²) is located immediately on the edge of the Order limits and is connected to the West Glen River. These features are illustrated in Appendix S to the Applicant's response to ExQ1 which sought clarity as to their location [REP2-038].
- 3.11.26. The three rivers comprise separate waterbodies that all fall within the Welland Management Catchment. The West Glen and Gwash waterbodies have an ecological status of moderate. The East Glen waterbody has an ecological status of poor.
- 3.11.27. The Order limits are stated in the ES as being predominantly served by a network of man-made drainage ditches typical of agricultural land which feed into the West Glen River. A network of subsurface drainage pipes is also present.
- 3.11.28. As illustrated below, Figure 11.4 of the ES [APP-198] shows that the majority of the Order limits is located within Flood Zone 1. Land with the Order limits and adjacent to the West Glen River is within Flood Zone 2 and 3a. Minor areas are located within Flood Zone 3b. Privately owned flood defences are located along the banks of the River Gwash approximately 600m to the west of the Order limits whilst defences are also present along the banks of the West Glen River through the centre of the Order limits. Neither have been considered as part of the EA's Flood Map for Planning.

Figure 8: Flood risk map



- 3.11.29. Section 1.8 of the FRA also considers historical flooding. It states that the EA’s Historic Flood Map and well as Strategic Flood Risk Assessments (SFRA) undertaken for RCC, SKDC and LCC shows that there are no historic flood records within the Order limits. However, it acknowledges that consultation feedback as outlined in Appendix 11.3 of the ES identifies villages outside of the Order limits that have been impacted by surface water flooding. In particular, the village of Greatford which is hydrologically downstream of the Order limits has a record of surface water and fluvial flooding from the West Glen River. This is also identified in SKDC’s SFRA. The ExA observed the West Glen River and the EA’s flood defences in Greatford on its USI on 19 October 2023 [EV-001b].
- 3.11.30. A range of public and private water supplies with the study area are identified in Figure 11.5 [APP-199] of the ES following consultation with the EA, Anglian Water, RCC and SKDC.
- 3.11.31. A range of statutory designated sites relating to water within 5km of the Order limits are identified in Table 11-5 of the ES but only the Ryhall Pastures and Little Warren Verges SSSI is considered to be hydrologically connected to the Order limits.
- 3.11.32. Whilst the Order limits are not located within a catchment of an Internal Drainage Board (IDB), as identified at paragraph 11.2.42 in Chapter 11 of the ES [APP-041] LCC have an agreement with IDBs that extend their operational ownership across the whole Lincolnshire. The Order limits fall within the extended management areas of the Black Sluice and Upper Whitham IDB.

Embedded mitigation

- 3.11.33. Embedded mitigation is identified in a variety of documents. The Works Plans [[REP7-005](#)] and Design and Access Statement [[REP5-058](#)] include 50m watercourse buffers for major construction works (i.e. construction compounds) and 10m buffers for minor works (i.e. solar panels) with the exception of watercourse crossing along access tracks. Horizontal Directional Drilling (HDD) and fencing surrounding the PV Arrays would be offset at least 10m either side from main rivers and ponds and 6m from ditches. Existing tracks are proposed to be used where possible to limit new drainage ditch crossings.
- 3.11.34. As specified in Chapter 11 of the ES [[APP-041](#)], the use of nitrates associated with the current arable use is not included with the Proposed Development and so it is considered by the Applicant that this may lead to an improvement in water quality.
- 3.11.35. A sequential approach to design as set out in the design guidance in the Design and Access Statement locates all electrically sensitive infrastructure (e.g. substation and solar stations) outside of Flood Zones 2 and 3.
- 3.11.36. The outline SWDS [[APP-087](#)] considers measures to control surface water within the Order limits, including the possible use of swales, scrapes and ditches. The oWMP provides details of measures to control surface water run-off, manage spillages of contaminants and drain hard-standing which would form part of a Pollution Prevention Plan to be incorporated into the CEMP.

Flood Risk Assessment

- 3.11.37. Modelling of fluvial flood risk simulated flows for a range of return periods from 50 % Annual Exceedance Probability (AEP) to 0.1 % AEP plus a 20 % allowance to account for increases in rainfall intensity and fluvial flows associated with climate change.
- 3.11.38. As the Proposed Development was not time limited at the point of submission of the application, an operational lifetime of 40-years was assumed for the purposes of the assessment. The higher central band for the 2050s is assessed as a climate change allowance. The EA's revised climate change peak river flow allowance for the Welland Management Catchment for the Higher 2050s is 10%. A 20% allowance is applied in the FRA as a conservative approach as agreed with the EA and outlined in Table 1 of Appendix 11.3 of the ES [[APP-084](#)].
- 3.11.39. During the Examination, the Applicant limited the operational period to 60-years and provided an assessment of the implications of this for the FRA in consultation with the EA [[REP7-038](#)]. This matter is discussed in the issues arising during the Examination section of this report.
- 3.11.40. The modelling results for fluvial flooding are illustrated in Annex C of the FRA. The maximum 1 in 100-year plus 20% flood depths for the Order limits are shown to be approximately 0.8m. This is confined to the

mitigation and enhancement area only with PV arrays located beyond this area. As outlined in the ES, PV arrays within the 1 in 1,000 year event are confined to relatively minor areas adjacent to the West Glen River. Appendix T to the Applicant's response ExQ1 (question 12.0.9) [REP2-038] subsequently provided a plan to identify the areas in question [REP2-038]. The FRA states that PV arrays would not displace flood water during a flood event as they would be mounted on narrow footings approximately 0.8m above ground level.

- 3.11.41. In relation to pluvial flooding, the FRA identified that the PV solar site is at medium risk of flooding during a 1 in 100 year event based on the EA's Risk of Flooding from Surface Water Map. Pluvial flood depths for a 1 in 100 year event are illustrated in Annex D to the FRA. The maximum modelled depth of 0.6m is below the 0.8m height of the base of the PV arrays and electrical connections. Other electrically sensitive equipment is proposed to be in contained units on ground mounted aggregate based platforms to raise them up by approximately 200 to 300mm. Onsite pluvial flood risk is proposed to be further mitigated with measures detailed in the SWDS.
- 3.11.42. Section 2.11 of the FRA considers the potential use of Horizontal Directional Drilling (HDD) that may be required under the West Glen River to support the construction of the grid connection cable. This would be enabled by the creation of launch pits which would comprise of shallow excavations. Whilst the location of HDD is to be confirmed, if located in an area of flood risk and a flood event occurs, the FRA considers any displacement of floodwater would not be significant in volume and would disperse in line with the local topography. It also states that the contractor would consult the EA flood warning service ahead of works to minimise the risk.
- 3.11.43. Table 2 of the FRA summarises the findings of the assessment in relation to fluvial, pluvial, tidal, groundwater, reservoirs, drainage, artificial and sewer flooding. The potential risk associated with all sources is deemed by the Applicant to be negligible.

Surface Water Drainage Strategy

- 3.11.44. The final outline SWDS [REP5-052] concludes that following the implementation of measures in the document, hard-standing associated with the Proposed Development would not lead an increase in discharge rates above greenfield levels. The proposed substation is expected to lead to around 0.36ha of impermeable elements located in a compound underlain by a free draining sub-base. The sub-base would drain into the West Glen River with a flow restriction device.
- 3.11.45. Solar stations are proposed to be underlain and bounded by graded aggregate that is intended to provide interception and attenuation of surface water prevent any significant increases.
- 3.11.46. Section 2.9 of the outline SWDS provides details of the operation and management of drainage infrastructure. The maintenance of drainage, including SuDS would be the responsibility of the Applicant.

- 3.11.47. PV array areas are also deemed by the Applicant not to significantly increase surface water run off rates. These areas would not increase hard standing. The Applicant expects water to run off the multiple drip lines of the PV arrays allowing surface water to disperse evenly with the proposed grass mix planting thus preventing channelization. It is stated that the generally flat topography would mean that rainfall does not drain quickly downslope. The SWDS draws upon Natural England's Technical Information Note 101 (TIN101) "Solar Parks: maximising environmental benefits" in the consideration of the interaction between run-off, soils and vegetation.
- 3.11.48. It is acknowledged that the geology with clay soils is likely to limit infiltration leading to concentrations of surface water entering the surrounding hydrological network. A minimum 6m vegetation and planting buffer strip is proposed from all watercourses to slow down surface water from entering them due to the friction of planting. The impact of buffer strips is considered through 2D modelling of an area to the east of Order limits currently in agricultural use and which drains into the West Glen River. This is deemed by the Applicant to be representative of the wider Order limits.

Water Framework Directive

- 3.11.49. A WFD assessment of the West Glen River as a waterbody receptor is provided in Chapter 11 of the ES. The Proposed Development is within the Anglian River Basin Management Plan. With the embedded mitigation measures, no deterioration of the WFD status of the West Glen River arising from the activities related to the Proposed Development is identified. Indeed, positive effects are anticipated due to measures such as the proposed grassland / wildflower mix offering enhanced erosion protection.

Summary of effects

- 3.11.50. Table 11-10 within Chapter 11 of the ES [[APP-041](#)] presents the Applicant's Summary of Effects. The main findings and residual effects are as follows:
- During construction, all residual effects relating to chemical pollution, erosion/sedimentation, impediments to flow, changes in soil interflow, soil compaction, migration of pollutants from contaminated land, increases in run-off and changes in water quality/supply are assessed as being negligible (non-significant).
 - During operation, all residual effects relating to increased run-off rates / volume, erosion/sedimentation, alterations to natural flow pathways and risk of pollution from spills/vehicles are assessed as being negligible (non-significant).
 - During decommissioning, all residual effects relating to chemical pollution, erosion/sedimentation, changes in water quality/supply and compaction of soil are assessed as being negligible (non-significant).

Issues arising during the Examination

Local Impact Reports

- 3.11.51. In its capacity as a Lead Local Flood Authority (LLFA), RCC identified concerns regarding flood risk with increased overland flows into the "River Glen". It considered that soil compaction was not suitably addressed. The potential use of concrete bases or piling to secure PV arrays was raised as a concern with the combined impact leading to surface water drainage issues within the site.
- 3.11.52. Furthermore, RCC identified a lack of flood prevention measures during construction when works may also lead to surface water drainage in ways that differ from those during the operational phase. The stripping back of land on other sites in the County was identified as a cause of less infiltration taking place. The breaking of existing land drains was a further concern as if any damage was not rectified, this would also cause flooding. As such, a negative impact for the Proposed Development was identified.
- 3.11.53. SKDC's LIR [[REP2-051](#)] acknowledged local concerns regarding flood risk that may arise from soil compaction and the introduction of hard-standing and requested that these issues were carefully considered.
- 3.11.54. LCC's LIR [[REP2-044](#)] accepted the findings of the Applicant's FRA that the PV arrays would not materially affect surface water run-off provided the grass mix mitigation is implemented as proposed. Subject to this and the suitability of the detailed drainage strategy to be signed off by the local authorities under the requirements of the DCO, LCC deemed the impacts to be neutral insofar as they affect Lincolnshire.

Position of the Local Authorities at the end of the Examination

- 3.11.55. By the close of the Examination RCC's SoCG [[REP9-022](#)] confirms that it agreed that the Applicant's SWDS, WMP and SMP would provide an adequate basis to address its concerns at this stage with a view to considering and signing off detailed plans at the detailed design stage by requirement in the DCO. This included concerns raised by RCC in its LIR in terms of surface water, the impacts of potential concrete bases and damage to land drains. However, as the Applicant's FRA was based on a 40-year operational life, RCC's Closing Summary Statement [[REP10-020](#)] makes the case that this time period should be applied rather than the 60-year timeframe now proposed. This issue has been considered in section 3.2 of our report.
- 3.11.56. LCC confirms in its SoCG [[REP9-020](#)] that it still of the view that the overall impacts of flood risk in Lincolnshire are neutral. It confirms that the Applicant's suggested offsets for ditches appear to be reasonable but that agreement would be required with the landowner. Drainage ditches within the Order limits are not adopted by the IDB. Agreement was reached with the Applicant on proposals for SuDS which are focussed on the substation as well as Rural SuDS (RSuDS) techniques to manage surface water for the PV array areas. The overall approach and principles

applied in the FRA and ES in relation to water resources is also agreed along with the content of the outline SWDS, WMP and SMP.

- 3.11.57. SKDC's SoCG [[REP9-021](#)] confirms that it defers to the views of LCC on flood risk matters as the LLFA.

Environment Agency

- 3.11.58. The EA's position at the close of the Examination as set out in the SoCG [[REP9-017](#)] confirms that it is satisfied with the Applicant's assessment in terms of the WFD and that it agrees with the mitigation measures proposed. The EA also deems the Applicant's assessment and conclusions in respect of fluvial flooding to be appropriate. It is also acknowledged that PV panels have been located to avoid areas at risk of flooding.
- 3.11.59. In response to the introduction of the 60-year operational time limit, the EA agreed a proxy approach to modelling and agreed that the Applicant's conclusion that no significant of risk of flood water displacement would occur is satisfactory. This issue is also considered later in this report.
- 3.11.60. It is agreed that the Applicant would seek to obtain necessary water licenses and permits from the EA at the construction stage.
- 3.11.61. Protective provisions relating to flood risk activities, including HDD works beneath the West Glen River and the protection of the Gwash-Glen water transfer pipeline were also agreed.

Surface water run-off and mitigation

- 3.11.62. Significant concerns were raised by IPs, including in WRs submitted by MPAG [[REP2-090](#)], Greatford Parish Council [[REP2-061](#)], Essendine Parish Council [[REP2-057](#)] and Mr Granville-White the Flood Warden for Greatford [[REP2-159](#)], regarding surface water run-off from the PV arrays areas and the implications of subsequent discharge into watercourses. These WRs were echoed by other local residents and were accompanied by extensive photographic and historical evidence of previous flood events in the area. The concerns of these IPs on this issue remained at the close of the Examination.
- 3.11.63. Such written and oral representations considered that the Proposed Development would increase the risk of flooding outside of the Order limits, including in the village of Greatford, the Church of St Mary in Essendine, Banthorpe Lodge and the Old School, Bourne Road [[REP5-041](#)] where flooding already occurs.
- 3.11.64. In addition to the pre-existing flooding issues, primary reasons for these concerns relate to the rate of run off from the PV panels and the land beneath them and the related interaction between surface water and soils.
- 3.11.65. In relation to the run-off rate from PV arrays, MPAG and Greatford Parish Council highlighted Section 3.1 and Table 7 of the Applicant's outline SWDS [[REP5-052](#)] which provide run off calculations for the PV arrays.

The section states that “As a result of the installation of PV panels, this calculation suggests that surface water runoff rates may increase by 14,147 l/s across the PV panel footprint compared to the baseline, which would equate to an approximate 256 % percent increase in runoff rates”,

- 3.11.66. In response to ExQ1 12.0.6 [[REP2-037](#)], the Applicant confirmed that the calculations presented in the outline SWDS assumed that the PV arrays would be placed on the ground and that the 256% increase quoted was only theoretical. Also, the raised nature of PV arrays would not prevent soil from absorbing rainwater as the panels would not be placed directly on the ground with the same area of soil available for infiltration as the baseline scenario.
- 3.11.67. Furthermore, the Applicant explained that with the introduction of grassland planting beneath the PV arrays and in the Mitigation and Enhancement areas, the potential interception of surface water is increased as evidenced by its 2D modelling. With this, the Applicant states that the run-off rate would be reduced when compared with the agricultural baseline. In its response to WRs [[REP3-035](#)], it also points to Section 3 of the FRA that states that implementation of measures in the outline SWDS would prevent an increase in flood risk elsewhere i.e. in Greatford.
- 3.11.68. Nevertheless, this position was contested by IPs and subject to scrutiny by the ExA during the Examination. The concentration of rainwater from the drip line of the PV arrays was acknowledged as a consideration in the outline SWDS and identified as a concern by MPAG and Greatford Parish Council with resultant erosion, channelisation and increased run off.
- 3.11.69. Subsequent to discussions at ISH4 [[EV-053](#)], we asked the Applicant ExQ2 12.0.3 to confirm if the 2D modelling had taken account of a worst-case scenario in which erosion and channelling of rainwater running off the PV arrays may occur when the ground beneath the panels was bare. The Applicant explained [[REP5-012](#)] that the modelling was intended to test the effectiveness of vegetation as a surface water management method and that it applied a 4m grid resolution that would not pick up localised channelling. In response to further discussion on the matter at ISH4, the Applicant [[REP7-036](#)] clarified that the modelling did not take account of any other measures such as swales as they would be subject to future detailed designs to be developed by the construction contractor and subject to approval by LLFA.
- 3.11.70. The topography of the Order limits and the orientation of the PV arrays were also considered. In response to ExQ2 12.0.3 [[REP5-012](#)], the Applicant stated that although most soils generate rapid surface water run off on slopes greater than 6%, 90% of the PV arrays area is located on land with slopes of 2% or less and only 2.5% of the PV array area is on a slope of greater than 6%. Furthermore, whilst the outline SWDS stated that run-off from the PV arrays could be exacerbated when they were not positioned in alignment with the topography, the Applicant clarified that gradient vector analysis of the Order limits showed that surface water flow direction is very rarely orientated north-south or east-

west for more than a few metres, meaning the alignment of PV arrays is unlikely to concentrate flows downhill, particularly given the shallow gradients upon which the PV arrays would be sited.

- 3.11.71. The possible implications of soil compaction for infiltration and surface water were highlighted as a concern by MPAG [[REP2-090](#)] and Greatford Parish Council [[REP2-061](#)]. A lack of infiltration testing by the Applicant aside from at the site of the proposed substation was identified in their WRs as a cause for concern that the related surface water implications could not be fully understood.
- 3.11.72. The Applicant's outline SWDS [[REP5-052](#)] explains that testing was not undertaken in the PV arrays areas as substantial increases in hard standing are not proposed and so infiltration capacity would be the same as the agricultural baseline. Nevertheless, the document also states that it *"assesses the baseline superficial geology cover as predominately clay soils overlain by a mix of superficial soils which are tilled or left as stubble for large parts of the year which is likely to limit infiltration and promote surface water runoff leading to concentrations of surface water entering the surrounding hydrological network"*.
- 3.11.73. The outline SWDS goes on to state that the proposed grass and vegetation cover is likely to generate lesser surface water run-off rates. MPAG and Greatford Parish Council WRs questioned the basis for such conclusions given the absence of wider infiltration testing and stated that the provision of grass and vegetation would only control surface water if it was well established in advance of the installation of solar panels.
- 3.11.74. It is clear to the ExA that the provision of grassland and vegetation beneath the PV arrays and in the buffer strips between these areas and watercourses is a fundamental component of the management of surface water. This matter is discussed further below.
- 3.11.75. The causes of soil compaction and proposed measures to address it are considered separately in Section 3.7 of this report. Given our conclusions in that section, it is not considered soil compaction would give rise to surface water and flooding issues, provided the outlined mitigation is suitably implemented as secured by the outline SMP as per Requirement 14 in the draft DCO [[REP9-005](#)].
- 3.11.76. The Applicant's conclusions regarding groundwater were also challenged by MPAG and Greatford Parish Council. It was suggested by the IPs in WRs that the mounting poles of the PV arrays were likely to encounter groundwater, contrary to the Applicant's conclusions set out in Section 2.6 of the FRA. MPAG and Greatford Parish Council based this position on photographs of testing pits for infiltration as provided in Annex C of the outline SWDS that were partially filled with water. However, the Applicant clarified in its response to WRs [[REP3-035](#)] that the water visible in the pits had actually been introduced to by the geotechnical contractor for the purposes of infiltration testing.

- 3.11.77. In response to RCC's surface water concerns relating to the possible use of concrete bases for PV arrays, the Applicant explained [ExQ2 12.0.7 [REP5-012](#)] that the use of concrete shoes would be applied if necessary, in limited areas of archaeological potential. As such, they would have limited impact on infiltration. Nevertheless, the outline SWDS was updated to make provision for the installation of berms on the upslope of concrete bases to increase infiltration and reduce run-off if considered necessary at the detailed design stage.
- 3.11.78. In terms of RCC's concerns regarding surface water arising from the stripping back of land during construction phase, the Applicant referred to measures set out in the outline SMP for the management of areas such as at the construction compounds or access tracks. These included the use of permeable matting and aggregate that would slow the flow of surface water. It also pointed to the provision of vegetation buffer strips to be provided that would also intercept and slow down the flow of surface water before it created issues elsewhere, including the wider hydrological network.
- 3.11.79. The potential for damage to occur to land drains and related flood risk implications as expressed by RCC [[REP2-047](#)] was also addressed by the Applicant at ExQ2 12.0.8 [[REP5-012](#)]. An updated outline OEMP [[REP10-006](#)] clarified that provision for the inspection and maintenance applied to all land drains, both existing and new. The outline DEMP was also revised to require any damage to agricultural drains that may have occurred to be repaired in accordance with Building Research Establishment (BRE)365.
- 3.11.80. As indicated by the Applicant, MPAG and Greatford Parish Council, the establishment of grassland underneath the PV arrays as well as in the buffer strips is key to addressing many of the surface water concerns. We note that Section 3.1 of the outline SWDS refers to research in the United States by Cook and McCuen⁴ which states that although solar panels do not have a significant effect on run off volumes, "*where the ground beneath the panels is bare there may be an increase in peak discharge*". This point was highlighted by the Applicant in its post hearing note for ISH2 [[REP4-041](#)] which went on to state that the outline SMP commits to establishing a vegetation sward, meaning there would not be bare earth under the drip lines of the PV arrays for the Proposed Development.
- 3.11.81. However, paragraph 4.7 of the outline SMP and the paragraph 1.1.3 of the GEMP [[REP7-021](#)] only commits to sow grassland in advance of construction as far as possible. The GEMP is included as Appendix 3 to the outline LEMP. In some areas sowing may occur after the installation of PV arrays. The decision over which areas to sow in advance would be taken closer to the start of the works and be influenced by the expected timing of construction, time of year, weather and the date that previous crops were harvested.

⁴ Hydrologic Response of Solar Farms (2013)

- 3.11.82. In response to the ExA's Rule 17 request [[REP9-027](#)] for further information related to advance sowing, the Applicant clarified that if panels are to be installed in summer or autumn, for example following harvesting of a previous crop, then whilst the seedbed can be prepared before panel installation, seeding should be held back until it is clear that adequate rainfall is expected such that germinating seeds are then likely to be able to survive.
- 3.11.83. In circumstances where advance sowing of grassland in the PV array areas cannot be established, the Applicant updated the outline WMP [[REP9-013](#)] to provide details of SuDS measures that would be implemented to slow run off rates before dispersion into the wider hydrological network in areas. Table 1.1 of the outline WMP summarises mitigation measures for the construction and operational phases including cut-off ditches, swales and retention ponds with the discharge of surface water to be controlled at a rate agreed with the LLFA.
- 3.11.84. Table 3-7 of the outline OEMP [[REP10-006](#)] also commits to the inspection of land under the PV arrays to check that bare ground is not forming and that re-seeding of grass is provided where necessary.
- 3.11.85. Following a suggestion from RCC at ISH4 [[REP7-036](#)], the outline OEMP now also includes provision for a review of mitigation measures following a flood event should drainage features become overwhelmed. This would be considered by the local planning authorities and seek to identify remedial actions.
- 3.11.86. Requirement 9 (surface and foul water drainage) and Requirement 14 (soil management plan) of the draft DCO [[REP9-005](#)] now require that the WMP and SMP that are prepared for the construction phase must be consistent with each other. This is to help ensure that proposals address the interaction between soil and water management.
- 3.11.87. On the basis of the consideration of surface water and related mitigation as proposed in updated outline OEMP, SWDS, WMP, SMP and GEMP, we are satisfied that the Applicant has demonstrated that surface water and the scope for flooding beyond the Order limits is suitably addressed to the extent that it can be in the absence of the final detailed design and layout of the Proposed Development. We also note that this is consistent with the final position of the LLFAs and the EA on this matter. The 2023 draft EN-3 also recognises that the impact of water from PV panels draining to the existing ground would not, in general, be significant.
- 3.11.88. The local authorities responsible for the consideration of approval of the SWDS, WMP, SMP as well and the LEMP (which includes the GEMP) under Requirements 9, 14 and 7 respectively would need to be satisfied that the plans address surface water and related soil management matters related to the detailed design for the Proposed Development.

Nutrient discharge

- 3.11.89. MPAG identified possible impacts from nutrient discharge on ground water and surface water as a result of the storage of grass cuttings on-

site. The issue was discussed at ISH2 [[REP4-041](#)] when the Applicant responded by explaining that the measures provided to control surface water in the outline SWDS and related documents as discussed above would control nutrient run off. It also noted that in the agricultural baseline scenario, nutrients are added annually and that any grass cutting stored on site with the Proposed Development would be lower than the baseline. Taking these matters into account, the ExA is satisfied with the Applicant's approach to managing nutrient impacts on water resources.

- 3.11.90. Nutrient run off matters are also considered in Chapter 4 of this report in relation to the Habitats Regulations Assessment.

Flood risk implications of the 60-year time limit

- 3.11.91. At ISH4 [[REP7-036](#)], the Applicant explained why it would not be possible to extend the period of the FRA from 40 to 60-years using the original methodology. The 60-year time frame would take the Proposed Development into the 2080s epoch where there will be a 28% uplift in peak flows in contrast with the 20% applied in the FRA. The 20% was an uplift from the 10% peak river flow allowances for the Welland Management Catchment for the Higher 2050s. However, the Environment Agency does not hold fluvial flood levels for the 1% annual exceedance probability (AEP) plus 28% climate change.
- 3.11.92. The Applicant's initial response to this issue was to update Table 3-7 of the outline OEMP [[REP6-009](#)] to state that should the Proposed Development lifetime extend into the 2080s then modelling must be undertaken in year 2078 using the appropriate climate change allowances. In consultation with the EA, should the result indicate that the Proposed Development had the potential to interact with flood depths then its design would be revised at that time to ensure that flood storage and conveyance is maintained for the West Glen River.
- 3.11.93. This commitment for additional modelling was subsequently included in the draft DCO by way of a new requirement (19) [[REP7-010](#)] at Deadline 7 that would ensure that if Works No 1 were to continue operation after 31 January 2077 updated modelling would be prepared and submitted to the EA for approval with similar measures for remedial action to be taken if necessary. The wording for the requirement was informed by engagement with the EA.
- 3.11.94. However, following discussion at ISH4, the Applicant undertook modelling with an approach agreed by the EA which applied a 0.5% AEP event as a proxy for the climate change allowance in the 2080s epoch. The results of this were outlined in the Applicant's Statement on 60-Year Time Limit [[REP7-038](#)], including in Figures 1 and 2 which show 0.5% AEP event extents and depths in relation to the PV array areas. They indicate that around 0.5% of the Works No 1 area would be impacted by the extent of a 0.5% AEP event. However, the maximum flood depth of 0.33m would be below the leading edge of the PV arrays that would be 0.8m above ground level.

- 3.11.95. In a more extreme scenario, 0.1% AEP event would result in 4.1ha of the works area being submerged above the leading edge of the PV arrays which the Applicant considers further demonstrated that a 28% increase in flows would not increase depths above the leading edge of arrays. The Applicant states that if this modelling were to persist, it could be mitigated by changing the pitch of the PV arrays and by implementing measures in the outline OEMP.
- 3.11.96. On this basis, the Applicant concluded that the introduction of the 60-year time limit would not displace flood waters and that the original conclusions in the ES of “no significant effects” remain unchanged.
- 3.11.97. In light of modelling results the EA [[REP8-027](#)] considered that Requirement 19 was no longer needed and agreed that the risk of fluvial flooding remained negligible. However, the EA went on to state that should the ExA determine that Requirement 19 is required, it should be revised to include the EA as a consultee, not an approving body.
- 3.11.98. The EA [[REP8-027](#)] also stated that assessment of risk from other sources, such as surface water, would also need to incorporate the appropriate climate change allowances for the 2080s epoch, as there may be an impact on the volume of surface water attenuation required that should be agreed with the LLFAs. In response to a request for further information on this issue, the Applicant explained that the correct climate change allowance for the 60-year time limit had already been applied in the outline SWDS and therefore no change was required [[REP9-027](#)].
- 3.11.99. In response to the Applicant’s proxy modelling, LCC [[REP8-024](#)] and RCC [[REP8-025](#)] both raised concerns that there was still potential for the PV arrays to be submerged given that the findings did not completely rule this scenario out and that mitigation could rely on changes to the design of the development that would be subject to approval that may not be granted. As such, whilst both LLFAs agree that there would be no significant effects over the 40-years period originally assessed in the FRA and ES, they considered that the conclusion of no significant effects over a 60-year period could not be reached.
- 3.11.100. Accordingly, both RCC and LCC made the case that a 40-year operational period should apply to the Proposed Development as this would be consistent with the approach taken in the FRA and ES which concluded that there were no likely significant effects. Both local authorities also made the point that if the Applicant wished to continue operation beyond 40-years, it could seek further approvals at that time and undertake updated modelling to consider flood risk. Both authorities [[REP9-033](#) and [REP9-034](#)] also later stated that no agreement had been reached with the Applicant regarding surface water related implications of the 60-year time limit as suggested by the EA.
- 3.11.101. SKDC welcomed the additional modelling undertaken by the Applicant but deferred to the view of LCC and RCC as LLFAs and the EA on the matter [[REP8-026](#)].

- 3.11.102. In response to the ExA's commentary and questions of the draft DCO, LCC [[REP8a-011](#)] stated that Requirement 19 would not be necessary if a 40-year period was applied to the consent as they previously requested. However, in the event that the SoS was minded to approve a 60-year operational period, LCC would support the inclusion of Requirement 19 revised to require local authority approval, in consultation with the EA. RCC [[REP8a-012](#)] also expressed a preference for a revised Requirement 19 that would require local authority sign off. MPAG [[REP8a-015](#)] also called for the retention of the requirement given the uncertainty regarding the impacts of climate change.
- 3.11.103. The ExA is mindful of the results of the proxy modelling undertaken by the Applicant and the fact that the EA concurs with its findings that there would be no significant effects insofar as fluvial flood risk. Nevertheless, RCC and LCC are both concerned about the Applicant's conclusion on this and the potential need for changes that may require approval. In addition, we are also conscious that it has not been possible to assess flood risk on a consistent basis across the 60-year time frame. Neither has agreement had been reached with the Applicant regarding surface water related implications of the 60-year time limit as suggested by the EA.
- 3.11.104. Therefore, whilst the Applicant's proxy modelling indicates that significant issues beyond 2077 are unlikely, as a precautionary measure, we recommend the inclusion of Requirement 19 to ensure that the matter is re-considered using the appropriate climate change allowances at that time. Requirement 19 is considered further in Chapter 7 of this report.

Sequential Test

- 3.11.105. MPAG's WR [[REP2-090](#)] accepted that the Applicant may have applied a sequential approach to design with the Order limits but contested that it did not adhere to the Sequential Test in relation to site selection. MPAG suggest that no consideration was given by the Applicant to locating the development in an area at lower risk of flooding within the site and elsewhere.
- 3.11.106. The Applicant responded to this point at Deadline 3 referring back to the FRA which indicated that the Proposed Development would not lead to flooding elsewhere and that the sequential approach to site selection had been followed. Further details of this were set out in Chapter 4 of the ES (Alternatives and Design Development) [[APP-034](#)] and in the Appendix 1 (Site Selection Assessment) to the Applicant's Planning Statement [[APP-203](#)].
- 3.11.107. At ExQ2 (question 12.0.1), the ExA sought the views of the EA, RCC, LCC and SKDC as to whether they were satisfied that the sequential approach to site selection as required in NPS EN-1 had been addressed.
- 3.11.108. The EA [[REP5-028](#)] acknowledged the Applicant's conclusions that there are no reasonably alternative sites within the vicinity that are entirely within Flood Zone 1. It went on to highlight that the area of search was centred around the Ryhall National Grid substation but was not clearly

defined. Whilst the Planning Practice Guidance recognises that an area of search can extend beyond local authority boundaries, it is not the role of the EA to determine its extent.

- 3.11.109. RCC [[REP5-024](#)] stated that it was not aware of any sequential testing being carried out. SKDC's [[REP5-025](#)] understanding was that the sequential test had been applied on a site-specific basis to avoid higher areas of flood risk within the Order limits. LCC had no comments to offer [[REP5-019](#)].
- 3.11.110. The matter was discussed at ISH4 [[REP7-036](#)]. The Applicant explained that flood risk was an issue considered amongst other environmental considerations when reviewing the suitability of land around the Ryhall substation. It also reiterated that the vast majority of the site is located within Flood Zone 1. Potential alternative sites identified in the Applicant's Site Selection Report were not considered to be true alternatives as they did not meet the policy requirements of NPS EN-3 in terms of delivering the same renewable energy infrastructure within the same time period, particularly in light of the ability to connect to Ryhall Substation
- 3.11.111. Considering the clarification provided by the Applicant at ISH4 and our consideration of alternatives in Chapter 3.2 of this report, the ExA is satisfied that all sequential test requirements have been met for both site selection and layout.

Private water supplies

- 3.11.112. A Written Representation from Mr Gresty [[REP2-160](#)] identified the presence of privately owned domestic water pipelines along the B1176 and The Drift. Concerns were raised in the representation regarding the potential for impacts to the pipelines and water supply arising from the Proposed Development. It was not clear from Chapter 11 of the ES [[APP-041](#)] and Figure 11.5 [[APP-199](#)] if the water supply in question had been identified and assessed.
- 3.11.113. In response to the ExA's request [[PD-017](#)] for further information, the Applicant confirmed [[REP8-021](#)] that the issue had not been assessed as data received from RCC for the purposes of the assessment did not include records of that supply. However, Table 3-7 of the outline CEMP [[REP8a-006](#)] was subsequently updated to include measures to identify and protect subsurface water supply infrastructure adjacent to the B1176 during the construction phase.
- 3.11.114. This update to the outline CEMP also provided corresponding measures to maintain a watching brief to help avoid issues with other private water supplies as identified in Figure 11.5 of the ES [[APP-199](#)] with provisions to rectify issues should they occur with temporary potable water being supplied and repairs to damaged pipes being undertaken as necessary.
- 3.11.115. The ExA is satisfied that adequate consideration and protection of private water supplies has been provided by the Applicant with suitable

management measures secured in the CEMP pursuant to Requirement 11 of the draft DCO.

Conclusions

- 3.11.116. In relation to the consideration of flood risk and surface water, the ExA considers that the requirements of 2011 NPS EN-1 and 2023 drafts EN-1 and EN-3 have been met by the Applicant. This conclusion is reached in the context of updates to proposals made by the Applicant during the Examination to consider and manage flood risk as included in outline OEMP, SWDS, WMP, SMP and GEMP.
- 3.11.117. Although there are pre-existing flooding issues in the vicinity and that this is a particular concern of several IPs, including in relation to the village of Greatford, there is no definitive evidence before the ExA that demonstrates that the Proposed Development would exacerbate this situation. The Applicant's FRA and outline SWDS and WMP conclude that flood risk would not increase off-site, provided that the outline mitigation measures are implemented. Based on all the evidence before us, we agree with these conclusions.
- 3.11.118. Taking account of the flexibility currently built into the Proposed Development, if the DCO is granted, it will be important for local authorities and/or local lead flood authorities as appropriate to carefully consider measures to address flood risk and related soil matters when they come to consider the discharge of Requirements 7, 9 and 14 at the detailed design stage. This would ensure that satisfactory mitigation is provided.
- 3.11.119. However, to ensure that flood risk is suitably assessed on a consistent basis across the full year operational period having regard to future climate change allowance, it is recommended that Requirement 19 is included within the DCO. This would require further modelling to be carried out for the post 2077 period of operation and make provision for further mitigation if required at that time. This would ensure that appropriate provision is made for any climate change allowances in the context of the proposed 60-year operational time period.
- 3.11.120. The requirements of the sequential approach and exception test as detailed in 2011 EN-1 and 2023 draft NPS EN-1 have been met. The ExA is also satisfied that the requirements of the WFD have been addressed and complied with along with other legislative requirements.
- 3.11.121. The Proposed Development also does not conflict with local policies or the National Planning Policy Framework in relation to water resources and flood risk matters.
- 3.11.122. Overall, the ExA concurs with the conclusions in Chapter 11 of the ES that the Proposed Development would not give rise to significant effects either positive or negative. On this basis, water and flood risk matters are considered by the ExA to be neutral for the purposes of the planning balance.

3.12. OTHER MATTERS

Introduction

- 3.12.1. This section considers other matters relating to firstly climate change and carbon, secondly glint and glare, and thirdly waste.

Climate change and carbon

- 3.12.2. In this part we primarily consider the overall change in carbon emissions that may arise from the construction, operation and decommissioning phases of the Proposed Development. Matters relating generally to decarbonisation as a policy objective are discussed above in section 3.2 'The Principle of the Development'.
- 3.12.3. Section 2 of 2011 EN-1 outlines policy in relation to reducing greenhouse gas emissions and meeting the legally binding commitments specified in the Climate Change Act 2008. Paragraph 5.3.4 of 2023 draft EN-1 requires the applicant to provide a greenhouse gas assessment as part of its ES. The SoS must also be satisfied that the applicant has considered greenhouse gas emission across each phase of the development and that reasonable steps have been taken to reduce emissions during construction and decommissioning.
- 3.12.4. Section 4.8 of 2011 EN-1 requires consideration of climate change adaptation and resilience in the ES. The 2023 draft EN-1 and EN-3 make similar provisions. 2023 draft EN-3 specifically identifies that solar PV sites may be proposed in low lying exposed sites with a need to consider the increased risk of flooding and the impact of higher temperatures. The implications of climate change for flood risk are considered separately in Section 3.11 of this report.
- 3.12.5. The NPPF supports the transition to a low carbon future whilst taking account of the effects of climate change.
- 3.12.6. Relevant local development plan policies include South Kesteven Local Plan Policy SD1 (Presumption in Favour of Sustainable Development) that expects development to minimise the impact on climate change and Policy RE1 (Renewable Energy Generation) that provides in principle support for renewable energy generation, subject to the consideration of various criteria.
- 3.12.7. Rutland's Core Strategy Policy CS20 (Energy Efficiency and Low Carbon Energy) and Site Allocation Plan Policy SP18 (Wind Turbines and Low Carbon Energy Development) both support low carbon energy, subject to specified criteria being addressed. The contribution of a development to national and international environmental objectives on climate change and national renewable energy targets is to be taken into account.
- 3.12.8. Chapter 13 of the ES [[APP-043](#)] provides an assessment of potential climate change effects related to the Proposed Development. Specifically, it assesses the vulnerability of the Proposed Development to the effects of climate change, the effects of the proposals on greenhouse gas

emissions and the effects of climate change on environmental receptors potentially affected by the Proposed Development.

- 3.12.9. Embedded mitigation is included in the outline CEMP [[REP8a-006](#)] and DEMP [[REP10-008](#)] includes measures to reduce greenhouse gases during the construction and decommissioning phases. These include adopting the Considerate Constructors Scheme, encouraging lower carbon modes of transport for construction staff (as detailed in the outline Travel Plan) and re-using site-won materials.
- 3.12.10. Increases in temperature related to climate change are considered in the ES with no significant effects identified.
- 3.12.11. In relation to greenhouse gases, an assessment of the effects during construction, operation and decommissioning is provided. A moderate beneficial (significant) effect is identified. Over an assumed 40-year operational period, the ES estimates a net carbon benefit of approximately 1.9 million tonnes of CO₂.
- 3.12.12. Following the introduction of the 60-year operational time limit, the Applicant provided an updated assessment of the gross carbon costs, gross benefit and net benefit over the newly defined lifetime of the Proposed Development [[REP7-038](#)]. This built on the assessment in the ES that had assumed an operational period of 40-years.
- 3.12.13. The carbon cost and benefit are calculated by applying an emission factor to each megawatt hour of generation likely to be achieved over the lifetime of the Proposed Development.
- 3.12.14. An emission factor of 48 g CO₂e/kWh is applied by the Applicant. This figure is taken from a 2014 report of the Intergovernmental Panel on Climate Change (IPCC), namely Annex III of the Fifth Assessment Report by Working Group 3, Technology-specific Cost and Performance Parameters. The figure applied is the median value taking account of lifecycle emissions from construction through to decommissioning, including all manufacturing, supply chain, operational and maintenance emissions.
- 3.12.15. The Applicant considered this to be a conservative estimate given that it was published in 2014 and there have been improvements to manufacturing efficiency and carbon reduction from PV manufacturing in the intervening period.
- 3.12.16. Whilst the IPCC's figures assumed a lifetime of 25 years, the Applicant applied this to a 40-year period on a pro-rata basis. To account for the 60-year operational period, two full lifecycles were assumed (40-years + 40-years), including construction, reconstruction and two decommissioning events. The Applicant applied the emission factor of 48 g CO₂e/kWh to an annual generation of 349,254 MWh over two cycles (80 years) to provide a "highly conservative" carbon cost of 1,342,172 tonnes CO₂e for a 60-year operational period.

- 3.12.17. The Applicant also drew comparison with calculations applied in three other solar NSIP projects to demonstrate that it had adopted a cautious approach, namely Sunnica (29.2 g g/kWh), Longfield (49.2 g/kWh) and Gate Burton (33.35 g/kWh).
- 3.12.18. A gross carbon benefit for the scheme was assessed by applying an indicative grid carbon intensity of 182 gCO₂e/kWh to lifetime generation provided in the Digest of UK Energy Statistics (DUKES). This takes account of PV degradation rates. Again, this is considered a conservative approach by the Applicant as it reflects existing grid carbon intensity rather than a figure for a marginal gas fired generator that the Applicant considers is most likely to be displaced by generation from the Proposed Development.
- 3.12.19. A lifetime generation of 18,046,608 MWh over 60-years is also factored in whilst taking account of degradation (2% in year one and 0.45% thereafter) to calculate a gross carbon benefit of 3,284,483 tonnes CO₂e over a 60-year lifetime. A net carbon benefit over 60-years was therefore estimated to be 1,942,310 tonnes CO₂e.
- 3.12.20. An updated carbon benefit over 40-years of 1,615,710 tonnes CO₂e was also provided. The assessment over 40-years included in the submitted ES did not factor the degradation of panels into the carbon cost calculation. Both scenarios are considered to be worst case scenarios by the Applicant. A breakdown of the supporting calculations for both scenarios was provided by the Applicant in Appendix A to its Deadline 8a submission to carbon related concerns raised by MPAG [[REP8a-010](#)]
- 3.12.21. RCC [[REP9-022](#)], LCC [[REP9-020](#)] and SKDC [[REP9-021](#)] all acknowledged the significant benefit of the Proposed Development's contribution towards achieving net zero. RCC [[REP2-048](#)] identified that whilst there would be an embedded carbon impact arising from the manufacture of the PV arrays and equipment and construction, this would be outweighed by the carbon savings generated throughout the lifespan of the development.
- 3.12.22. However, some IPs, including MPAG, challenged the Applicant's assessment of carbon throughout the Examination [including [REP2-090](#) and [REP8-030](#)]. As discussed in Section 3.2 of this report, MPAG agreed that a plant load factor of 11.4% as applied by the Applicant was appropriate, assuming that the satellite data and associated calculations were correct.
- 3.12.23. Other areas of contention remained, the most significant of which being the Applicant's calculations for the net carbon impact of the Proposed Development. In particular, MPAG consider that the Applicant's use of the IPCC median emission factor of 48g CO₂e/kWh of electricity generated underestimated carbon emissions. It was considered likely that the PV panels would be manufactured in China where with a higher dependence on fossil fuels for energy generation. There would also be a carbon impact from the transportation of goods from China.

- 3.12.24. In addition, MPAG concern regarding the Applicant's consideration of the time period over which a net carbon benefit would be derived. With the introduction of the 60-year operational time limit, the Applicant had assessed net carbon benefits over an initial 40-year period with an additional 20 years then factored in. It considered that the Applicant should have assessed the 60-year period on a 30+30 basis to reflect that it considered to be a more realistic lifespan of PV panels. A longer carbon payback time from that initially assessed in Chapter 13 of the ES was also identified by MPAG.
- 3.12.25. The Applicant outlines its position on these concerns in its response to MPAG at Deadline 8a [[REP8a-010](#)]. In relation to the potential use of panels sourced from China leading to a higher carbon cost, the Applicant's case includes its comparison with assumptions applied in other NSIP solar schemes as detailed above as well as increased use of renewables energy by manufacturers of PV panels in China.
- 3.12.26. In response to MPAG's concerns over the time periods over which the two lifecycles are assessed, the Applicant maintained that this represented a conservative approach for the reasons. As such, it considered that the timing of the replacement of panels was not relevant to the calculation.
- 3.12.27. Having reviewed the respective position on this matter, the ExA considers that the Applicant has demonstrated that there would be a substantial net carbon benefit over both a 40 and a 60-year period. The assumptions applied are broadly comparable with other NSIP solar schemes and reflect a conservative approach.
- 3.12.28. Whilst it is noted by the ExA that the Applicant's latest calculations for a net carbon benefit over 40-years (c. 1.6 million tonnes) are lower than those presented in the ES (c. 1.9 million tonnes), it is not considered that this difference would significantly alter our conclusion that a significant benefit is derived from the Proposed Development. In any event, a 60-year operational time limit is now proposed.
- 3.12.29. We are satisfied that the Applicant has taken reasonable steps to reduce carbon emissions during the lifetime of the Proposed Development in accordance with the NPSs. We concur with the Applicant's conclusions in the ES that the net carbon benefit of the Proposed Development would be a material change to the UK's emissions of greenhouse gasses leading to a moderate beneficial effect. The cumulative effect along with other renewable energy schemes will contribute to the UK's aims to reduce carbon emissions. As reflected in section 3.1 above, the overall benefits of the schemes contribution towards renewable energy carries substantial weight in the planning balance.

Glint and glare

- 3.12.30. The 2023 draft EN-3 sets out relevant policy for glint and glare effects. It notes that solar panels are designed to absorb, not reflect, radiation. However, panels may reflect the sun's rays at certain angles causing glint and glare (3.10.93). Where necessary, the applicant should provide an

assessment of potential impact and impairment based on the angle and duration of incidence and the intensity of the reflection (3.10.95).

- 3.12.31. In relation to mitigation 2023 draft EN-3 says (3.10.25 - 3.10.26) consideration should be given to the use of anti-glare/anti reflective coating, specifying a maximum reflection angle and the use of screening between potentially affected receptors and panels.
- 3.12.32. The SoS should assess the impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure (3.10.149). Although notes that there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety (3.10.150).
- 3.12.33. The Applicant's assessment of glint and glare effects is summarised in section 15.4 of Chapter 15 (Other Environmental Topics) of the ES [APP-045]. This draws upon its Glint and Glare Study [APP-104] in Appendix 15.3 of the ES. This has assessed both the Single Axis Tracker and Fixed South Facing static panel mounting system. It has assessed the effects of road users, dwellings, aviation and the railway.
- 3.12.34. The assessment has assumed a worst-case conservative approach that the panels do not have anti reflective coating. However, further to discussions at ISH4 [REP7-036] the Applicant agreed to update the Proposed Development Parameters (Table 1) [REP7-013] and outline OEMP [REP8-011] to ensure that anti reflecting coating will be applied.
- 3.12.35. Effects on residential properties are not considered by the assessment to be significant. Where several properties might experience some impact from glint and glare this would be limited by the separation distance to the nearest panels, views being limited to first floors and above and effects coinciding with direct sunlight which is more significant.
- 3.12.36. The Glint and Glare Study found that, due to potential significant effects from both types of panels that, additional mitigation in the form of screening would be required for Wood Farm Cottages on Uffington Lane comprising a pair of semi-detached properties. This would be secured by the outline LEMP [REP7-021].
- 3.12.37. With regard to potential effects on Barbers Hill House discussed at ISH4 the Applicant [REP7-036] concludes that given the minimum separation distance of 215m from the closing panels and that potential effects would only be experienced from the above ground floor, that only a moderate impact would result and no mitigation is recommended. Taking account of the Applicant's commitment to anti-reflective coating, we are satisfied that effects on this property would not be significant.
- 3.12.38. We are satisfied that the additional mitigation planting proposed near North Lodge Farm Bungalow (for which further assessment has been provided in Appendix A of REP7-036) on Uffington Lane will ensure that no significant glint and glare effects would result for the occupiers of this property. Furthermore, we note that additional planting has also been proposed near to Church Farm in Essendine to limit any effects for the

occupiers of this property. No evidence is before us to suggest that any adverse health effects would result from any glint and glare.

- 3.12.39. No adverse effects are reported for aviation including in relation to the nearby RAF Wittering. No objections have been received and are satisfied with the Applicant's findings.
- 3.12.40. In relation to road users, the Applicant's modelling shows that solar reflections are geometrically possible towards sections of the B1176 and A6121. However, both existing and proposed screening would significantly obstruct views of the proposed panels and we are satisfied that no adverse effects would result.
- 3.12.41. For railways, solar reflections would be possible towards train drivers along a section of the railway line. However, existing and proposed screening would limit views. Furthermore, for the 100m section (for fixed panels) where reflections would be within a train drivers primary field of view, there would be no views of signals, crossings etc, the separation distance involved would limit effects and effects would coincide with direct sunlight which is more significant source of light compared to solar reflection. No significant effects are therefore reported and we note there has been no objection from Network Rail.
- 3.12.42. In response to representations [[REP2-100](#) and [REP2-169](#)] made regarding effects on equestrian activities, the Applicant draws attention to the British Horse Society guidance '*Solar farms near routes used by Equestrians*', which notes that any reflection is unlikely to be a direct problem for horses or riders. Also taking account of the existing and proposed screening planting adjacent to roads and bridleways and the additional of anti-reflective coating, we consider it is unlikely that significant adverse effects would result.
- 3.12.43. We conclude that no significant effects would result in relation to glint and glare from the Proposed Development which would be satisfactorily in accordance with 2023 draft EN-3. The ExA therefore considers that matters relating to glint and glare are a neutral consideration in the overall planning balance.

Waste

- 3.12.44. 2011 EN-1 states that the decision-maker should consider the extent to which the Applicant has proposed an effective system for managing waste arising from construction, operation and decommissioning. Factors to be considered include the management of waste and whether adequate steps have been taken to minimise the volume of waste arisings and the volume of waste arisings sent to disposal (except where that is the best overall environmental outcome) (paragraph 5.14.7).
- 3.12.45. Applicants should set out arrangements for managing any waste and prepare a Site Waste Management Plan (SWMP) (paragraph 5.14.6). Where necessary, requirements can be used to ensure that appropriate waste management measures are applied (paragraph 5.14.8).

- 3.12.46. The 2023 draft EN-1 takes a similar approach. It also states (5.15.19) that the SoS should have regard to any potential impacts on the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 or wider goals set out in the government's Environmental Improvement Plan.
- 3.12.47. Section 15.7 of the ES [[APP-045](#)] sets out the Applicant's approach to and assessment of the likely effects that may arise in relation to waste from the Proposed Development. It confirms that the Waste Hierarchy will be adopted throughout the construction, operation and decommissioning phases. A Construction Resource Management Plan would be finalised prior to the start of construction pursuant to the outline CEMP. Table 3-12 of the outline CEMP [[REP8-009](#)] sets out the overall provisions to managed waste. A separate outline Excavated Materials Management Plan (included within the outline Soils Management Plan [[REP8a-004](#)]) provides details of how excavated materials will be managed in accordance with the waste hierarchy.
- 3.12.48. Waste control and management during decommissioning is covered by the outline Decommissioning Environmental Management Plan (DEMP) [[REP10-008](#)] with the detailed DEMP being subject to approval by the relevant local authorities under Requirement 18 of the draft DCO [[REP9-005](#)].
- 3.12.49. With the proposed embedded mitigation including relevant control mechanisms, the Applicant predicts no significant adverse effects during the construction, operation or decommissioning phases.
- 3.12.50. Whilst concern has been raised by several Interested Parties [including [REP2-047](#), [REP2-064](#), [REP2-090](#) and [REP7-049](#)] regarding waste in relation to decommissioning, we are satisfied that the outline DEMP would reasonably provide for the removal and recycling or disposal of equipment/materials in accordance with good practice following the waste hierarchy and the relevant legislation at the time of decommissioning.
- 3.12.51. We are satisfied that the approach set out by the Applicant would provide an effective system for dealing with waste arising from the Proposed Development, including with regard to opportunities for recycling and the reduction of waste. It would satisfactorily accord with the relevant waste management policies of 2011 EN-1 and 2023 draft EN-1, including the need to have regard to the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 and wider goals set out in the government's Environmental Improvement Plan. Matters relating to waste do not therefore weigh against the Order being made.

Good design

- 3.12.52. Section 4.5 of 2011 EN-1 sets out criteria for 'good design' for energy infrastructure. It recognises that good design is a means by which many policy objectives in the NPS can be met and that it goes far beyond aesthetic considerations. The functionality of an object, including fitness for purpose and sustainability, is equally important. EN-1 goes on to say

that energy infrastructure developments should be sustainable and, having regard to regulatory and other constraints, as attractive, durable and adaptable as they can be. The decision-maker should satisfy itself that the Applicant has considered both functionality (including fitness for purpose and sustainability) and aesthetics as far as possible.

- 3.12.53. Section 4.6 of the 2023 draft EN-1 generally carries forward these principles and criteria for achieving good design. 2023 draft EN-3 states (3.5.2) that proposals for renewable energy infrastructure should demonstrate good design, particularly in respect of landscape and in the design of the project to mitigate impacts such as noise and effects on ecology and heritage.
- 3.12.54. We cover aesthetic and landscape character related effects of the Proposed Development in Section 3.6 and climate change matters regarding flood risk in Section 3.11. We also find that the Applicant's design approach to noise, ecology and biodiversity has served to minimise adverse effects in these areas. With regard to the historic environment, the effects on designated heritage assets have been taken into consideration, and the approach to archaeology is capable of being satisfactory subject to approval of any further trail trenching.
- 3.12.55. The proposed design envelope allows for flexibility in important elements of the design such as the selection of PV panels. The fitness for purpose and functionality of the Proposed Development would largely be determined through detailed design decisions that would be made post consent. Nevertheless, the updated Design Guidance in the Design and Access Statement [REP5-058] and Project Parameters [REP7-013] set design parameters, which along with the outline management plans, would provide the scope to achieve functionality and sustainability at the detailed design stage. Such matters would be secured through the recommended Development Consent Order (DCO).
- 3.12.56. In Section 3.6, we find that the application details, including more specific design guidance, might have gone further in terms of seeking to minimise the visual effects of the proposed substation and to provide local authorities with additional design content and coding to help future consenting in meeting good design objectives. We also consider that greater consideration could have been given to the Design Guidance for the proposed solar stations. We do acknowledge, however, the other design and mitigation measures as set out in Section 3.6, through which the Applicant has sought to minimise the landscape and visual effects.
- 3.12.57. Notwithstanding, the reservations outlined above, we consider as a whole that the Applicant has generally taken satisfactory account of functionality and good design as far as is reasonably possible at this stage of design development. We find no significant conflict with 2011 EN-1 or 2023 draft EN-1 and EN-3 in this respect and conclude that this matter does not weigh against the Order being made.

3.13. INTERACTIONS OF EFFECTS AND CUMULATIVE EFFECTS

General policy background

- 3.13.1. 2011 EN-1 advises that the SoS should take into account, amongst other things, any long term and cumulative adverse impacts. It requires applications to include information on how the effects of the proposal would combine and interact with the effects of other development. Similar policy can be found in the 2023 draft EN-1.
- 3.13.2. Both 2011 EN-1 (paragraph 4.2.6) and 2023 draft EN-1 (paragraph 4.2.19) make clear that the decision maker should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy, or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.
- 3.13.3. In arriving at our findings on interactions of effects and cumulative effects, we have had regard to the extent to which the specific individual effects in relation to the relevant planning matters have been considered and assigned weight under separate planning issues discussed earlier in this Chapter.

Residential living conditions

- 3.13.4. Whilst individual effects on residential living conditions are considered in the relevant sections above, it is subsequently necessary to consider the combined implications of any adverse effects.
- 3.13.5. At North Lodge Bungalow (now known as Goose Lodge), the apparently unoccupied North Lodge Farm and at Wood Farm Cottages we consider that moderate adverse visual effects would occur at year 1 due to views of solar panels. In each case, we note that these adverse effects would decrease in time once the proposed planting has matured and become insignificant over time.
- 3.13.6. These and other properties would also experience noise from construction, including those properties near construction compounds, but this would be temporary and we have found that noise effects during construction have been minimised as far as is practicably and reasonably possible. Subject to the proposed mitigation, no significant adverse effects would result from glint and glare for any residential property.
- 3.13.7. We also note that certain residents living in close proximity to works in the highway (such as properties along the A6121 in Essendine and at Barbers Hill) would experience disruption from construction works in the highway, albeit that it would be for a limited duration and appropriately managed. Disturbance would also potentially arise from the construction compounds (including secondary compounds), but this would be temporary and we are satisfied that reasonable measures would be secured in the relevant outline management plans by the draft DCO to minimise adverse effects.

- 3.13.8. We conclude that whilst there will be adverse effects on residential living conditions during the construction periods, these effects have been satisfactorily minimised. Effects on living conditions would be considerably less during operation, particularly so once planting has established. Further disturbance will be likely during decommissioning but this would again be temporary and would be subject to reasonable management and mitigation secured through the outline Decommissioning Environmental Management Plan [[REP8-013](#)].
- 3.13.9. Taking account of our findings on residential living conditions, we do not consider that there is justification for the removal of Fields 1 and 4 [[APP-112](#)] as suggested by Mrs Woolley [[REP10-044](#)].
- 3.13.10. We consider the Applicant's approach to minimising effects on residential living conditions to be reasonable and proportionate. Overall, notwithstanding the adverse visual effects reported above and our separate conclusions below on health and wellbeing, the combined effects on residential living conditions do not weigh significantly against the Proposed Development.

Health and wellbeing

- 3.13.11. Both 2011 EN-1 and the 2023 draft EN-1 recognise that energy production has the potential to impact on the health and wellbeing of the population, noting that access to energy is clearly beneficial to health as a whole, but may also have negative impacts. They both recognise that new energy infrastructure may have indirect health impacts, including if it effects the use of open space for recreation and physical activity. The 2023 draft EN-1 (4.3.6) states that opportunities should be taken to mitigate indirect impacts, by promoting local improvements to encourage health and wellbeing.
- 3.13.12. 2023 draft EN-3 does not raise health and wellbeing as being a particular issue for solar projects, though it does set out policies in relation to what could be considered as contributory issues such as landscape, visual and residential amenity along with construction effects.
- 3.13.13. The NPPF includes the need to support communities health, social and cultural well-being, promote healthy and safe communities and to promote health and well-being and not undermine quality of life.
- 3.13.14. Numerous written and oral representations from and on behalf of local residents have expressed strong concerns regarding the effects of the Proposed Development on health and wellbeing. At Deadline 5, MPAG submitted a document [[REP5-030](#)] setting out what it considers to be the negative health and wellbeing implications, including from the application process itself and from the Proposed Development. Essendine Parish Council made specific representations on this matter at ISH2 [[REP4-051](#)].
- 3.13.15. At the scoping stage [[APP-050](#) and [APP-051](#)], it was determined that the matter of human health could be addressed through the relevant technical assessment, including highways, noise and vibration, air quality and glint and glare. The Applicant explained in its response to Relevant

Representations that these assessments conclude that no likely significant effects are expected to arise from these topics.

- 3.13.16. In response to our ExQ2 10.0.8 [REP5-012] the Applicant explained that Chapter 16 of the ES (Interactions of Effects and Summary of Cumulative Effects) [APP-046] considers the potential for the impacts to result in a significant in-combination health and wellbeing effect but did not consider it feasible for significant effects to occur and, as a result, no detailed assessment was presented. Further in response to our question, it presented a further brief assessment including recreation and amenity, traffic, noise, climate change and employment opportunities. It states that the technical assessments identify that there are likely to be some adverse impacts and that for health and wellbeing, any in combination impacts would be felt most strongly by residents living in close proximity to the Order limits.
- 3.13.17. The Applicant draws attention to effects on PRow users being for a short period of an overall journey, the localised visual impacts and limited noise effects on residents. As such it states that the combination of any insignificant impacts should be seen as small and, given the scale of the significant and non-significant impacts, these impacts would not result in any significant in-combination effects in health and wellbeing at any reasonable receptor population level. It notes [REP6-004] that the related guidance, including the Institute of Environmental Management and Assessment (2022) Guide to Determining Significance for Human Health in EIA, says that in EIA, health impacts should be considered against a framework that identifies the significance of a health effects at a population health level. In this regard, we note the specific references in 2011 EN-1, 2023 draft EN-1 and the NPPF to the potential effects on the community.
- 3.13.18. In our assessment, this is not a case where, for example, long-term significant noise or air quality impacts would result with resulting adverse health effects. There is also no compelling evidence to suggest that the Proposed Development, including reflections from solar PV arrays, could lead to adverse effects for specific health conditions. We consider potential effects from electromagnetic fields in section 3.9 finding no adverse effects. However, that is not to say that the effects on general health and, particularly, wellbeing should be overlooked, noting paragraph 4.2.19 of 2023 draft EN-1 as referred to earlier in this section.
- 3.13.19. A development of the scale and form proposed in a rural area will undoubtedly have effects and we have found significant adverse effects to result upon landscape character and visual amenity and for recreational users, albeit that this would in our view only be experienced in the immediate area of the Order limits rather than further afield. We acknowledge the representations from local residents within the community living near to the site who state they have moved to the area for its rural benefits and of other long-standing residents, the wellbeing of all of whom is likely to be boosted by the rural surrounds and setting, including but not limited to the opportunities for local walks within close reach of their properties.

- 3.13.20. We have concluded elsewhere that the Applicant's has generally put forward reasonable proposals to minimise harm on specific issues. However, residual adverse effects would result. The construction phase of the Proposed Development is likely to be disruptive for local residents (including an accumulation of noise, visual amenity, traffic and access effects) over an estimated two-year period, whilst noting that construction is likely to take place in different part of the Order limits at different times.
- 3.13.21. After construction ends, local residents within the community would still clearly notice considerable change to the character and form of their immediate area from the scale and extent of the Proposed Development. Those residents who take local walks for recreation and relaxation using the footpaths within the Order limits would experience adverse landscape, visual and noise effects, albeit that noise effects would be minor. The proposed permissive paths would provide new footpaths during operation and a greater choice of walks, but these would be similarly affected.
- 3.13.22. Health and wellbeing effects are difficult to quantify and may vary from person to person depending on their location in relation to the site and how they use the local area. We have taken into account the proposed mitigation and enhancement measures (including BNG proposals) along with the Applicant's site design including, for example, the setbacks that have been provided form PRoW, local settlements and individual properties.
- 3.13.23. However, for the community living in the immediate vicinity of the site, we consider it likely that the accumulation of effects (including minor effects) from the construction and operation of the Proposed Development would detract from the positive elements of the immediate rural area. In doing so it would be likely to have an adverse effect on the wellbeing of a considerable proportion of local residents. Although this matter is not specifically raised in 2023 draft EN-3, it does not accord with the relevant aims of 2011 EN-1 and 2023 draft EN-1, and the NPPF. We consider it to be an important and relevant consideration in this case that carries moderate negative weight in the overall planning balance.

Cumulative effects

- 3.13.24. Chapter 16 of the ES [[APP-046](#)] includes a summary of cumulative effects (combined effects of the Proposed Development and other development). Table 16-3 of Chapter 16 sets out the overall summary of cumulative effects, finding that no significant adverse effects would result taking account of other developments.
- 3.13.25. Major beneficial climate change effects are reported in relation to the cumulative effects along with other developments that will displace greenhouse gas emissions contributing towards the UK's legally binding emission reduction targets. The Applicant also finds that moderate beneficial effects would result for construction employment arising from the combined effects of construction employment, and linked supply

chain benefits and contribution to Gross Value Added generated by all the developments on the cumulative effects shortlist.

- 3.13.26. The cumulative long list was updated during the Examination in liaison with the District and County Councils, with a final list of additional cumulative long list developments submitted at Deadline 9 [[REP9-025](#)] including a commentary on any implications they might have. It concludes that these do alter the findings in Chapter 16. No objection was raised to this.
- 3.13.27. The concerns raised by Interested Parties in relation to the cumulative loss of agricultural land, including BMV land, are considered in the Land Use and Soils section of our recommendation above. Similarly, matters relating to cumulative transport effects are considered in the Traffic and Transportation section above. In both cases, no significant adverse effects are reported. There are no other schemes that would lead to any other significant cumulative effects, including with regard to landscape or visual effects.
- 3.13.28. We are satisfied that no long term, cumulative significant adverse impacts are likely to arise from construction, operation and decommissioning activities. The benefits reported are also acknowledged, though they do not add significantly to the weight given to the specific matters in our assessment of the Proposed Development. Accordingly, we are satisfied that the requirements of the EIA Regulations, 2011 EN-1 and 2023 draft EN-1 are met in this regard. Matters relating to cumulative effects are a neutral consideration in the overall planning balance.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

- 4.1.1. This Chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoS), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)⁵ and no reasonable scientific doubt remains⁶.
- 4.1.3. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 of this report.
- 4.1.4. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISH).

4.2. REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES) AND CONSULTATION

- 4.2.1. The ExA produced a Report on the Implications for European Sites (RIES) [[PD-016](#)] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to 19 September 2023 to include Deadline 1 to 6. The RIES was issued to set out the ExA's understanding on HRA-relevant

⁵ The term "European sites" includes Special Areas of Conservation (SAC), proposed SACs, Special Protection Areas (SPA), potential SPAs, Ramsar, proposed Ramsar and sites identified or required as compensatory measures for adverse effects on any of these sites. "UK National Site Network" refers to the network of European sites within the UK.

⁶ CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time.

4.2.2. Consultation on the RIES took place between 06 October and 25 October 2023. Comments were received from NE [[REP8-029](#)] at Deadline 8. These comments have been taken into account in the drafting of this Chapter. No other comments on the RIES were received during Examination.

4.2.3. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations should the SoS wish to do so.

4.3. HRA IMPLICATIONS OF THE PROJECT

4.3.1. The spatial relationship between the Order limits of the Proposed Development and European sites is shown in Figures 7.1 (Maps 1 and 2) of the ES [[APP-175](#) and [APP-176](#) respectively].

4.3.2. The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, unless likely significant effects (LSE) can be excluded, the SoS must make an 'appropriate assessment' of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.

4.3.3. The Applicant's assessment of effects is presented in the following application document:

- A Shadow Habitats Regulation Assessment provided as Appendix 7.5 of the ES [[APP-063](#)].

4.3.4. The Applicant submitted an updated HRA Report at Deadline 5 [[REP5-054](#)]. This update was provided to correct an inconsistency across the application documents, namely ES Chapter 7 (Ecology and Biodiversity) [[APP-037](#)], ES Chapter 11 (Water Resources and Ground Conditions) [[APP-041](#)], and the HRA Report [[APP-063](#)], regarding the distance of the Proposed Development site from Baston Fen Special Area of Conservation (SAC). Any further references to the Applicant's HRA Report refer to this updated version unless otherwise specified.

4.3.5. No LSE on non-UK European sites in European Economic Area (EEA) States were identified in the Applicant's HRA Report. Only UK European sites are addressed in this report. No such impacts were raised for discussion by any IPs during the Examination.

4.4. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

4.4.1. Under Regulation 63 of the Habitats Regulations the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose

of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

- 4.4.2. The Applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect'. The European sites and qualifying features that were considered in the Applicant's assessment of LSE are presented in Table 1 of the Applicant's HRA Report. The sites considered in the Applicant's screening exercise were:
- Rutland Water Special Protection Area (SPA);
 - Rutland Water Ramsar site;
 - Baston Fen Special Area of Conservation (SAC);
 - Grimsthorpe SAC; and
 - Barnack Hills and Holes SAC.
- 4.4.3. The initial effect pathways on European sites were identified in section 6 of the HRA Report. Of the potential effects identified, several were excluded by the Applicant. This was on the basis that there was no pathway for LSE based on the distance from the Order Limits and the nature of the Proposed Development. As noted in paragraph 6.4 of Applicant's HRA Report [[REP5-054](#)] the impacts scoped out of Stage 1 were:
- direct impacts as a result of habitat losses or damage to any site;
 - displacement or disturbance of birds which form the interest feature of the SPA and Ramsar sites within the European site itself; and
 - adverse impacts to the structure and diversity of the grasslands within Grimsthorpe SAC and Barnack Hills and Holes SAC.
- 4.4.4. Impacts during the operational phase were scoped out due to the nature of the Proposed Development, as stated in paragraph 6.5 of the Applicant's HRA Report.
- 4.4.5. Table A1 of the RIES lists the sites, qualifying features and effects which the Applicant included in its consideration of LSE.
- 4.4.6. At ISH2, Mallard Pass Action Group (MPAG) raised concern regarding potential nutrient runoff from the creation of wildflower grassland and storage of arisings that may result in adverse effects on the Baston Fen SAC, as summarised in the Applicant's summary of oral submissions [[REP4-041](#)]. NE [[REP5-037](#)] stated that whilst storage of arisings on the site may lead to some nutrient runoff this is likely to be a considerably smaller nutrient load compared to the current arable agricultural usage. Rutland County Council [[REP5-024](#)] also agreed that adverse impacts on Baston Fen SAC are unlikely to occur from this impact pathway. The Applicant's HRA Report [[REP5-054](#)] was not updated to include this impact pathway.
- 4.4.7. NE [[RR-0823](#)] confirmed that it was satisfied that the Applicant had identified the correct European sites and qualifying features on which LSE could occur as a result of the Proposed Development.

- 4.4.8. Based on the evidence above, the ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

LSE from the Proposed Development alone

- 4.4.9. The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE alone in Section 6 of the Applicant's HRA Report [[REP5-054](#)]. These were the:
- loss of Functionally Linked Land use by bird species which are interest features of the Rutland Water SPA and Ramsar site during construction; and
 - changes in hydrology or degradation of the Baston Fen SAC during construction and decommissioning.

Loss of Functionally Linked Land used by qualifying bird species of Rutland Water SPA and Ramsar site

- 4.4.10. The Applicant's HRA Report [[REP5-054](#)] concluded no LSE on this impact pathway on the basis of the distance of the designated sites from the Order Limits meaning the Order Limits are unlikely to support the species for which the SPA and Ramsar are designated. Details of the wintering bird surveys undertaken are provided in ES Appendix 7.4: Ecology and Biodiversity – Baseline Report [[APP-062](#)].

Changes in hydrology or degradation of Baston Fen SAC

- 4.4.11. A potential impact pathway exists due to the hydrological connectivity between the Order Limits and Baston Fen SAC. However, the Applicant's HRA Report [[REP5-054](#)] concluded no LSE on this impact pathway due to the limited use of chemicals during construction, the setback from waterways embedded into the Proposed Development design, and the dilution which would occur should any contaminants enter the waterway due to the distance between the Order Limits and the SAC (over 10km).
- 4.4.12. The Applicant's HRA Report [[REP5-054](#)] concluded no LSE from the Proposed Development alone on any of the European sites considered in its assessment.

LSE from the Proposed Development in combination

- 4.4.13. The potential in-combination effects arising from the Proposed Development are set out in Section 7 of the Applicant's HRA Report [[REP5-054](#)]. In-combination effects were screened out on the basis that the Proposed Development would not have any effects on European sites alone and therefore could not add to any effects from other development, as stated in paragraph 7.1 of the Applicant's HRA Report. No methodology was provided to support this statement and it was unclear what other plans and projects were considered within the assessment of in-combination effects.

4.4.14. During Examination, the ExA [[PD-008](#)] and NE [[REP2-093](#)] requested further information including the methodology used to inform this decision along with the other plans and projects considered. At Deadline 3 the Applicant responded [[REP3-026](#)] that it did not consider further information regarding the in-combination assessment was required. At Deadline 5, NE subsequently agreed [[REP5-009](#)] with the Applicant's conclusion that in-combination effects are unlikely to occur. No further justification for this stance was provided and the ExA sought clarity from NE on this point as a question within the RIES [[PD-016](#)]. At Deadline 8, NE explained [[REP8-029](#)] that the likely impact of the development on Baston Fen SAC is so small that it can reasonably be assumed that it will not add to the impact of any other project, referred to as a "de minimis" effect. No further information was provided by the Applicant in relation to this matter at Deadline 8.

4.4.15. At the ExA's Second Written Questions (ExQ2) [[PD-014](#)] the LPAs were asked which other plans or projects should be considered within the in-combination assessment. No plans or projects were provided by the LPAs. No plans or projects were highlighted by any other IPs during the Examination.

4.5. HRA CONCLUSIONS

4.5.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoS.

4.5.2. Three European Sites and their qualifying features were considered in the Applicant's assessment of LSE: Rutland Water SPA, Rutland Water Ramsar, and Baston Fen SAC. LSE were screened out for all sites and impact pathways both from the Proposed Development alone and in-combination with other plans or projects.

4.5.3. The sites for which the Applicant concluded no LSE would occur from either the project alone or in combination with other projects and plans are presented in Table A1 of the RIES [[PD-016](#)].

4.5.4. As discussed above, MPAG raised concern regarding a potential impact pathway on Baston Fen SAC. Considering all the evidence provided, the ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.5.5. The methodology for screening out LSE in-combination with other plans and projects was subject to some discussion and scrutiny during Examination. Whilst the Applicant did not set out in full the methodology underpinning its conclusions in terms of in-combination effects, the ExA notes that the sites and features assessed, and the conclusions reached, were not disputed by any IP during the Examination. The final submitted

SoCG between the Applicant and NE [[REP9-019](#)] records agreement on the conclusions of the screening assessment.

- 4.5.6. Considering all the evidence provided, the ExA is satisfied with the approach to the assessment of alone and in-combination LSE.
- 4.5.7. Taking into account the reasoning set out above, the ExA considers that the Proposed Development is unlikely to have a significant effect from the impacts identified above on the qualifying features of the European sites identified above when considered alone, or in combination with other plans or projects. This is not disputed by NE.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Chapter sets out our overall assessment of the planning merits of the Proposed Development. This is in the light of the legal and policy context set out in Chapter 2 and individual applicable legal and policy requirements identified in Chapters 3 and 4. It firstly provides a summary of our findings on the main planning issues, before considering matters relevant to the planning balance.
- 5.1.2. Our conclusions on this case for the granting of Development Consent are based on an assessment of those matters which we consider are both important and relevant, as well as the submitted Local Impact Reports.
- 5.1.3. Further to our conclusion on the case for Development Consent in this chapter, Chapter 6 considers the Applicant's proposals for Compulsory Acquisition and related matters, followed by consideration of the draft Development Consent Order (DCO) in Chapter 7. We subsequently reach an overall recommendation as to whether Development Consent should be granted for the Application in Chapter 8. We consider the implications of the new suite of January 2024 energy NPSs in Chapter 8.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

Principle of development

- 5.2.1. It is clear to the ExA that there is an urgent need for utility scale solar PV in order to meet the Government's net zero and energy security objectives as well as its legal obligations. This is reflected in the 2023 draft EN-1 and EN-3. The SoS is directed to give substantial weight to this need by 2023 draft EN-1.
- 5.2.2. The Proposed Development would make a demonstrable contribution to these needs, and is capable of doing so, within a reasonably short timeframe therefore supporting the Government's aim of a five-fold increase in the deployment of solar by 2035. Accordingly, we afford substantial positive weight to the need for the Proposed Development.
- 5.2.3. In relation to site selection, we consider that the Applicant has met the requirements of national policy and broadly adheres to relevant local policies. The use of agricultural land has been shown to be necessary. An area of relatively poorer quality agricultural land was initially identified based existing ALC mapping in the vicinity of the Ryhall National Grid substation. The use of BMV agricultural land has not been avoided. However, the design evolution of the Proposed Development led to the removal of fields entirely within Grade 2. Nevertheless, there remains some residual harm with the use of BMV land.
- 5.2.4. The Proposed Development is of a substantial scale but not significantly proportionately larger in terms of acres per MWp when compared with

other NSIP solar projects. It also falls within the range of 2 to 4 acres per MW as identified in 2023 draft EN-3. Overplanting is proposed and this does have the consequence of increasing the size of the Order limits and PV array area. However, the concept of overplanting is supported by 2023 draft EN-3.

- 5.2.5. A BESS is not included and so the Proposed Development may not contribute as much towards the National Grid as a project with the ability to import and export electricity. However, it does utilise the existing infrastructure at the Ryhall National Grid substation and the provision of the necessary upgrades to support a BESS would delay the point at which energy is generated. Furthermore, whilst national policy recognises the benefits of co-location with storage, there is no requirement for this to be provided.
- 5.2.6. We are satisfied that alternatives, including alternative technologies have been considered in a proportionate manner in accordance with requirements of 2011 EN-1, 2023 draft EN-1 and the EIA Regulations.
- 5.2.7. We consider that there is not an overriding reason to limit the operational period to less than 60-years. If, however, the SoS disagrees, and wishes to restrict the operation period to, for example, 40-years, then Requirement 18 (1) of our recommended DCO would need to be amended to reflect this.
- 5.2.8. Overall, we consider that the Proposed Development generally accords with the policy support for renewable energy generation and the legal obligation to reduce greenhouse gases. We give substantial weight to the benefits of the proposed development.

Air quality

- 5.2.9. We are satisfied that the Proposed Development would not lead to a breach in a statutory limit, nor would it lead to substantial changes to air quality. Furthermore, whilst additional road traffic, non-road mobile machinery and dust arising from the Proposed Development has the potential for some impacts, particularly during construction and decommissioning, the mitigation measures as set out in the outline CEMP, OEMP, DEMP and CTMP minimise air quality effects.
- 5.2.10. As such, the ExA concludes that the Proposed Development accords with 2011 EN-1, 2023 draft EN-1 as well as the NPPF and local policies. The negligible adverse effects in terms of air quality are deemed to be neutral for the overall planning balance.

Ecology and biodiversity

- 5.2.11. The ExA generally concurs with the Applicant's conclusions including that no significant adverse effects would result. Effects have been suitably assessed and informed by an appropriate level of surveys and adequate mitigation is secured where necessary to manage potential impacts on habitats, species including local, national and international designated sites.

- 5.2.12. Temporary harm to the Essendine hedgerow south side MacMillan Way LWS, Essendine Verge SE of the Freewards (N Side) LWS, Essendine Verge (NE Side) Near North Lodge Farm LWS is identified during the construction phase impacting upon hedgerows and grassland. Whilst this is considered to be of significance at a District level only and not in EIA terms, the harm does weigh against the Proposed Development. Limited weight is given to this harm given its scale, temporary nature and status of the LWS. Measures to mitigate potential harm to the Ryhall Pasture and Little Warren Verges SSSI, ground nesting and wintering birds are also appropriate.
- 5.2.13. In relation to SKDC's Local Renewable Energy Appendix Criterion 7 regarding adverse effects, we consider that the public benefits of the Proposed Development in terms of energy generation and meeting net zero as discussed in Section 3.2 of this report clearly outweigh any residual harm to ecology.
- 5.2.14. Wider enhancement measures are also proposed and are embedded into the design. In relation to BNG, we consider this to have been assessed on an appropriate basis applying Natural England's Metric 3.1. We deem it to be a benefit of the Proposed Development and afford it moderate weight in the planning balance.
- 5.2.15. The Proposed Development is considered to accord with relevant policies in 2011 EN-1 as well as 2023 draft EN-1 and EN-3. In addition, we find general compliance with the NPPF and local development plan policies. Whilst adverse effects, including for LWSs, have been identified, the Proposed Development provides mitigation as envisaged by South Kesteven Local Plan Policy EN2 and Rutland Site Allocations and Policies Development Plan Document Policy SP19. Overall, ecology and biodiversity matters weigh positively in the planning balance and we afford this little weight.

Historic Environment

- 5.2.16. The Applicant has clearly given consideration to the effects on designated assets in both the proposed design and mitigation measures. We are satisfied that this is not a case where substantial harm would occur. In all our considerations above regarding the setting of heritage assets, we have taken account of the proposed 60-year operational period, but given the lengthy time period, we do not find that it would significantly reduce effects in comparison to a permanent permission.
- 5.2.17. We have found, however, that despite the design and mitigation measures, the Proposed Development would result in minor, and less than substantial harm, upon the setting and consequently the significance of the Grade II listed Banthorpe Lodge. We go on to consider this harm to a designated heritage assets against the public benefits of the proposal in our later Planning Balance (Chapter 5). There would also be some minor harm to the setting and significance of the non-designated Braceborough Grange, albeit noting that this asset is of lesser value in comparison to designated heritage assets.

- 5.2.18. Otherwise, we are satisfied that the proposal would preserve the significance of other nearby designated heritage assets, including the Scheduled Monument of Essendine Castle and Grade II* Listed Church of St Mary. It is noted that the considerable distance from several other Scheduled Monuments, Listed Buildings, Conservation Areas and Historic Parks and Gardens would be such to prevent any likelihood of any effects upon their setting.
- 5.2.19. With regards to below ground archaeology, we have concerns regarding the Applicant's existing evaluation of potential archaeological remains, most particularly the limited overall extent of trial trenching. As such there is a risk of disturbance to, as yet, undiscovered remains from piling associated with the construction of the solar PV arrays. We consider there to be a high probability that the site may include yet undiscovered archaeological assets. In our view, the Applicant's preferred Requirement 10 (Archaeology) based on the current outline WSI would not provide sufficient scope for appropriate archaeological mitigation to be provided.
- 5.2.20. Therefore, we prefer the Applicant's 'without prejudice' version of this Requirement which, in our view, will provide an opportunity for further trial trenching to take place, to reduce any risk of harm to archaeological assets to acceptable levels. The ExA's recommended DCO therefore contains the 'without' prejudice version of Requirement 10 with amendments relating to the discharging authority as set out in Chapter 7. With this in place, there would no conflict with the relevant provisions on archaeology of the existing and draft NPSs as listed above, or the relevant provisions of the Development Plan.
- 5.2.21. The minor harm to the significance of Braceborough Grange and the less than substantial harm to the significance of the designated Banthorpe Lodge weighs against the proposal, noting that great weight should be given to a designated assets conservation and that any harm or loss of significance of a designated heritage asset should require clear and convincing justification.
- 5.2.22. We have not identified any instances where substantial harm would result from the Proposed Development upon designated heritage assets. However, the less than substantial harm we have identified should be weighed against any public benefit of the development, recognising that the greater the harm the greater the justification that will be needed. We consider this balance later in this Chapter.

Landscape and visual effects

- 5.2.23. Although not covered by any statutory protection, the existing site and its surroundings are clearly well appreciated and enjoyed by local residents and recreational users. The Proposed Development is large in scale and extent and would result in considerable change to the existing landscape character and visual amenities of the area.
- 5.2.24. We acknowledge that there would be good degree of compartmentalisation which would result in visual effects being somewhat disaggregated over the wider area. The Applicant has also

sought to reduce its visual and landscape effects through the retention of key landscape features, buffer areas from roads and PRow and proposed planting. The planting is likely to be successful in some respects in mitigating effects, though less so where it impinges upon existing open characteristics of parts of the Order limits or obstructs existing views of the countryside from PRow.

- 5.2.25. Where relevant, the various outline management plans also include specific landscape and visual mitigation measures and the Design Guidance also seeks to reduce adverse effects. Generally, the mitigation measures proposed are reasonable in seeking to minimise the adverse effects, though significant residual adverse landscape and visual effects would still result as we set out earlier in this section. Whilst the effects would be reversible after decommissioning, the long operational period means that this makes no material difference to our assessment of effects.
- 5.2.26. Notwithstanding that the proposed substation would be subject to detailed design approval, that substations tend to be utilitarian in appearance, and acknowledging that full technical details are not known at this point, we consider that the application details might have gone further in terms of seeking to minimise the visual effect of this element of the proposal and to provide local authorities with additional design input and coding to help future consenting in meeting good design objectives. We also consider that greater consideration could have been given to the Design Guidance for the proposed solar stations, with little attempt to ensure that these elements are in keeping with local vernacular. Nevertheless, these detailed matters would subsequently fall for the local authorities to consider pursuant to Requirement 6 of the DCO and we are satisfied overall that these design matters are capable of being adequately resolved to minimise the adverse effects.
- 5.2.27. We also find that moderate adverse visual effects would result at year 1 of operation at a limited number of residential properties. These adverse effects would decrease once the proposed landscaping has matured.
- 5.2.28. We conclude that overall, the Applicant's approach to minimise the harm, including the proposed mitigation, would be in general accordance with 2011 EN-1, along with both the 2023 draft EN-1 and 2023 draft EN-3. We go on to weigh the residual harm against the benefits of the Proposed Development later in this chapter.
- 5.2.29. In terms of local policy, given the resulting adverse effects, we conclude that the Proposed Development will be contrary to the relevant policies of the Development Plan, including where they seek to maintain and enhance landscape character and local distinctiveness which the Proposed Development would not achieve. In a similar vein, the Proposed Development would inevitably not accord with several design aims of the NPPF, including to add to the overall quality of the area and to be sympathetic to local character.

5.2.30. These matters therefore lead us to conclude overall that landscape and visual matters weigh moderately against Development Consent being granted.

Land use and soil

5.2.31. We are satisfied that the Applicant has provided a suitable assessment of ALC classification within the Order limits in line with 2023 draft EN-3 as well as the South Kesteven Local Plan.

5.2.32. Furthermore, with the measures set out in the outline SMP, we are satisfied that there would not be any permanent loss, albeit it would be long term, or down grading of agricultural land or soil quality. Matters relating to avoiding and mitigating soil compaction, should it occur, as well as for the establishment of grassland in the PV array areas are also considered by the ExA to be appropriate.

5.2.33. This aligns with 2011 EN-1 in terms of the need to mitigate impacts on soil quality as well as 2023 draft EN-1 which requires applicants to minimise impacts on BMV land. The provision of an SMP is encouraged by 2023 draft EN-1 and EN-3 to minimise impacts on soil health and quality. This includes proposals for the sustainable re-use of soil re-use and to protect soil during construction and so we find general compliance with the 2023 draft EN-1 and EN-3 in this regard.

5.2.34. In line with 2023 draft EN-1, EN-3 and the NPPF, the SoS should take account of the economic and other benefits of BMV land. In this regard, there would be harm related to the loss of agricultural production during the operational period. There is also some conflict with South Kesteven Local Plan Policy SP1 (Spatial Strategy) which states that proposals should "...protect opportunities for food production and the continuance of the agricultural economy".

5.2.35. However, the soil quality would be maintained or restored to an equivalent quality and the effects in terms of a loss of food production in isolation or in combination with other potential solar projects in Lincolnshire and Rutland, are not significant. Accordingly, we consider this harm to carry little weight in the planning balance.

Noise and vibration

5.2.36. Although there would be some potentially disruptive noise during construction and decommissioning, we are satisfied that the measures proposed by the Applicant would satisfactorily mitigate and minimise the adverse effects. During operation we are also satisfied that suitable measures would be in place to ensure that the detailed design would not lead to any significant effects.

5.2.37. In the context of section 5.11 of 2011 EN-1, we conclude that the Proposed Development would:

- Avoid any significant adverse impacts on health and quality of life of local from noise; and

- Mitigation and minimise other adverse impacts on health and quality of life from noise.

5.2.38. In this case, there would not be any improvements to health and quality of life compared to the existing baseline scenario (the 3rd limb of paragraph 5.12.17 of the 2023 draft EN-1. However, this does not weigh against the proposal as it is only required 'where possible and we do not consider it to be realistic or pragmatic in this case for actual improvements to be made.

5.2.39. We are also satisfied that the appropriate mitigation measures are set out in the relevant outline management plans and properly secured in the draft DCO with final details, to achieve good design in this context, subject to the approval of the relevant local authority. These measures along with the operational noise assessment that would be required under Requirement 16 of the draft DCO would ensure that level of noise arising from the construction, operation and decommissioning stages are acceptable.

5.2.40. Overall, the Proposed Development would accord with the relevant policy aims of 2011 EN-1, 2023 draft EN-1 and 2023 EN-3 along with the relevant development plan policies and NPPF. Taking all relevant matters into consideration, we conclude that noise and vibration matters do not weigh against the Order being made.

Socio economics

5.2.41. The importance of PRoW has been recognised by the Applicant and mitigation is proposed and secured to reasonably minimise effects during construction, operation and decommissioning. However, we consider that residual harm would result for PRoW users during these phases.

5.2.42. The permissive paths are considered to be of minor benefit given that whilst they would increase the options for walkers etc. during operation, the enjoyment of users would be constrained by the proximity to and effects of the Proposed Development.

5.2.43. During operation, we consider that significant adverse effects would result on PRoW users within and near to the Order limits, most particularly on two routes. However, the effects would decrease further away from the Order limits and the wider PRoW would therefore not be significantly affected. Therefore, overall, we consider that moderate adverse effects would result on PRoW users during operation.

5.2.44. We also conclude that there would be minor adverse effects on PRoW users during the approximate 2 year construction period, noting that construction would be likely to take place in different parts of the Order limits at different times.

5.2.45. No PRoW Management Plan is proposed as envisaged by 2023 draft EN-3 but we are satisfied that the CEMP, OEMP and DEMP adequately address the safety of PRoW users. Despite the harm we have found in relation to PRoW and taking account of the Applicant's proposals to minimise

effects, we consider that the Proposed Development broadly accords with 2011 EN-1 and 2023 draft EN-1 and draft EN-3.

- 5.2.46. There would be conflict with the following local policies. RCC Core Strategy Policy CS23 resists development that would result in the harm to the use or enjoyment of green infrastructure by the public. South Kesteven Local Plan Policy RE1 also requires the support of the local community but significant concerns have been expressed by the community in relation to the effect on PRoW users.
- 5.2.47. Minor economic benefits in terms of employment generation and GVA are identified alongside minor adverse effects for tourism. Overall, taking account of the mix of adverse and beneficial effects, we consider that the effects on PRoW, whilst they have been reasonably minimised, lead to us conclude that socio-economic matters weigh to a little degree against the Proposed Development.

Traffic and transportation

- 5.2.48. With the controls specified in the outline OEMP to limit HGV movements to no more than five daily two way HGV movements for the planned maintenance activities as well as the need to report to the local authorities, the ExA is satisfied that no significant effects would arise in line with the Institute of Environmental Management and Assessment (IEMA) 'Environmental Assessment of Traffic and Movement' (2023) criteria of proposals not leading to more than a 10% change in daily HGV flows. 2023 EN-3 also recognises that the construction phase is more likely to raise more issues.
- 5.2.49. An updated outline Travel Plan and CTMP alongside embedded mitigation are provided that provide measures to mitigate the effects of the Proposed Development and to manage demand as envisaged by 2011 EN-1. Measures include a designated HGV construction traffic route, parking and measures to manage effects on public roads.
- 5.2.50. In line with 2023 draft EN-3, access routes during construction are identified and assessed with consideration also given to the extent to which road can accommodate the volume of loads and width of vehicles. Cumulative effects are also considered.
- 5.2.51. 2023 draft EN-1 states that the SoS should not withhold consent if requirements can be imposed to mitigate effects and that refusal on highways grounds where there would be unacceptable impacts on highways safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision. The ExA considers that there is not a case for refusal of the Proposed Development on transport matters in these terms. Mitigation proposed is secured by requirement and subject to local authority approval at the detailed design stage.
- 5.2.52. The Proposed Development is also considered to broadly align with policies in the NPPF and the local development plan. Overall, we are

satisfied that that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in combination with other developments. We consider this to be neutral in the overall planning balance.

Water and flood risk

- 5.2.53. In relation to the consideration of flood risk and surface water, the ExA considers that the requirements of NPS EN-1 and drafts of NPS EN-1 and EN-3 have been met by the Applicant. This conclusion is reached in the context of updates to proposals made by the Applicant during the Examination to consider and manage flood risk as included in outline OEMP, SWDS, WMP, SMP and GEMP.
- 5.2.54. Although it is clear that there are pre-existing flooding issues in the vicinity and that this is a particular concern of several IPs, including in relation to the village of Greatford, there is no definitive evidence before the ExA that demonstrates that the Proposed Development would exacerbate this situation. The Applicant's FRA and outline SWDS and WMP conclude that flood risk would not increase off-site, provided that the outline mitigation measures are implemented. Based on all the evidence before us, we agree with these conclusions.
- 5.2.55. Taking account of the flexibility currently built into the Proposed Development, if the DCO is granted, it will be important for local authorities and/or local lead flood authorities as appropriate to carefully consider measures to address flood risk and related soil matters when they come to consider the discharge of Requirements 7, 9 and 14 at the detailed design stage. This would ensure that satisfactory mitigation is provided.
- 5.2.56. To ensure that flood risk is suitably assessed on a consistent basis across the full year operational period having regard to future climate change allowance, it is recommended that Requirement 19 is included within the DCO. This would require further modelling to be carried out for the post 2077 period of operation and make provision for further mitigation if required at that time. This would ensure that appropriate provision is made for any climate change allowances in the context of the proposed 60-year operational time period.
- 5.2.57. The requirements of the sequential approach and exception test as detailed in NPS EN-1 and draft NPS EN-1 have been met. The ExA is also satisfied that the requirements of the WFD have been addressed and complied with along with other legislative requirements.
- 5.2.58. The Proposed Development also does not conflict with local policies or the National Planning Policy Framework in relation to water resources and flood risk matters.
- 5.2.59. Overall, the ExA concurs with the conclusions in Chapter 11 of the ES that the Proposed Development would not give rise to significant effects either positive or negative. On this basis, water and flood risk matters

are considered by the ExA to be neutral for the purposes of the planning balance.

Other matters

- 5.2.60. With regard to climate change and carbon effects during construction, operation and decommissioning, we are satisfied that the Applicant has taken reasonable steps to reduce carbon emissions during the lifetime of the Proposed Development in accordance with the NPSs. We concur with the Applicant's conclusions in the ES that the net carbon benefit of the Proposed Development would be a material change to the UK's emissions of greenhouse gasses leading to a moderate beneficial effect. The cumulative effect along with other renewable energy schemes will contribute to the UK's aims to reduce carbon emissions. As reflected above, the overall benefits of the schemes contribution towards renewable energy carries substantial weight in the planning balance.
- 5.2.61. In respect of glint and glare, we are satisfied that no significant effects would result from the Proposed Development which would be satisfactorily in accordance with 2023 draft EN-3. Matters relating to glint and glare are a neutral consideration in the overall planning balance.
- 5.2.62. On waste, we are satisfied that the approach set out by the Applicant would provide an effective system for dealing with waste arising from the Proposed Development, including with regard to opportunities for recycling and the reduction of waste. It would satisfactorily accord with the relevant waste management policies of 2011 EN-1 and 2023 draft EN-1, including the need to have regard to the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 and wider goals set out in the government's Environmental Improvement Plan. Matters relating to waste do not therefore weigh against the Order being made.
- 5.2.63. In respect of good design, we consider as a whole that the Applicant has taken satisfactory account of functionality and good design as far as is reasonably possible at this stage of design development. We find no significant conflict with 2011 EN-1 or 2023 draft EN-1 and EN-3 in this respect and conclude that this matter does not weigh against the Order being made.

Interactions of effects and cumulative effects

- 5.2.64. We are satisfied that the combined effects on residential living conditions do not weigh significantly against the Proposed Development.
- 5.2.65. Notwithstanding our specific finding on living conditions, we consider it likely that, taking account of the interactions between different effects and the contribution the rural site makes to the wellbeing of residents, the Proposed Development would have an adverse effect on the wellbeing of at least some local residents living in the immediate vicinity of the site. We conclude that, at worst, these would amount to adverse effects of moderate significance.

- 5.2.66. With regard to cumulative effects with other development, we are satisfied that no cumulative adverse effects are likely to arise from construction, operation and decommissioning activities. The relevant requirements of NPS EN-1 and draft NPS EN-1 are therefore met in this regard and the matter of cumulative effects does not weight against the making of the Order.

Habitats Regulations Assessment

- 5.2.67. In Chapter 4 of this report, we have found that the Proposed Development is not likely to have a significant effect on the qualifying features of any European sites, when considered alone or in combination with other plans or projects. While there are relevant mitigation measures secured by the Applicant's final draft DCO which would minimise impacts to European sites, none of these have been relied upon in reaching the conclusion of no significant effects. We consider that there is sufficient information for the SoS to conclude that an appropriate assessment is not required.

5.3. THE PLANNING BALANCE

Historic environment conclusion

- 5.3.1. We have had regard to the duties under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. We also note that great weight should be given to the conservation of designated heritage assets.
- 5.3.2. We consider that the need for and the benefits of the Proposed Development outlined above, namely its timely contribution towards renewable energy generation, biodiversity net gains and minor socio-economic benefits, would outweigh the less than substantial harm that we have identified would result to the significance of the Grade II listed designated heritage asset at Banthorpe Lodge. We also consider that the minor harm to the significance of the undesignated heritage asset at Braceborough Grange would be outweighed by these benefits.
- 5.3.3. Taking account of the public benefits, we are satisfied that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated heritage assets. Overall, in spite of the harm resulting, we consider that matters concerning the historic environment would accord with the relevant policy provisions of the 2011 EN-1, 2023 draft EN-1 and 2023 draft EN-3.

The overall planning balance

- 5.3.4. In accordance with the duties under PA2008 we have had regard to the three Local Impact Reports (LIR) (s105(2)(a), prescribed matters (s105(2)(b) and all other important and relevant matters, including NPSs, the NPPF and the Development Plan (s105(2)(c).
- 5.3.5. Local Impact Reports were submitted by Lincolnshire County Council, Rutland County Council and South Kesteven District Council. Matters raised include (but are not limited to) the recognition of the positive

impacts of the production of renewable energy and biodiversity net gain, and adverse impacts on landscape character and visual amenity, loss of agricultural land (including best and most versatile), impacts on public right of way and other recreational users, effects on ecology, residential amenity, disruption during construction, flooding from surface water, impacts on below ground archaeology and traffic disruption.

- 5.3.6. The Proposed Development would make an important and timely contribution towards the generation of renewable energy, contributing to UK energy security and a secure, flexible energy supply, in accordance with Government policy and legal obligations. It would help to meet the need for renewable energy identified in 2011 EN-1, 2023 draft EN-1 and 2023 draft EN-3. This in our view carries substantial weight in favour of granting Development Consent. It would also provide for significant Biodiversity Net Gain (over and above the proposed legislative target) which we have afforded moderate weight. Further minor socio-economic benefits would accrue in terms of employment generation and GVA.
- 5.3.7. Whilst harm would arise from the Proposed Development, including during the operation and construction phases, we are generally satisfied that the Applicant has taken a reasonable and proportional approach in seeking to minimise such harm, with relevant mitigation measures contained in the various outline management plans that were extensively updated during the Examination in response to issues raised.
- 5.3.8. We have considered the impacts based on the worst-case scenario as assessed in the ES, taking account of the 60-year operational period now proposed by the Applicant.
- 5.3.9. We are satisfied that the adverse impacts on landscape character and visual amenity, carrying moderate weight, would not be so damaging to offset the benefits of the Proposed Development.
- 5.3.10. We list below the topic areas/issues where we conclude that any adverse effects would be, at worse, minor or where we are satisfied that the impacts would be sufficiently minimised and/or mitigated, such that they would not weigh significantly against the Order being made:
- Air quality
 - Biodiversity and ecology (on Local Wildlife Sites)
 - Land use and soils
 - Noise and vibration
 - Residential living conditions
 - Socio-economic (in relation to tourism)
 - Traffic and transportation
 - Water and flood risk
- 5.3.11. Whilst there would be carbon emissions associated, most particularly in association with construction (including the procurement of panels and other materials), overall these would be clearly offset by the carbon benefits of the generation of renewable energy during operation.

- 5.3.12. As detailed elsewhere in our report, including the issue specific conclusions above, we have found that significant residual harm attracting moderate weight would result in relation to the following topic areas/issues:
- Landscape and visual effects (including during construction and operation)
 - Socio-economic effects on PRow users
 - Wellbeing of residents living in proximity to the Order limits
- 5.3.13. The less than substantial harm to the setting and significance of the Grade II listed Banthorpe Lodge and minor harm to the setting of Braceborough Grange) also need to be considered in our overall balance, notwithstanding our findings that such harm would be outweighed by the public benefits.
- 5.3.14. In spite of the harmful impacts that are likely to result and recognising that nationally significant infrastructure projects by their nature are likely to result in some adverse effects, we consider that where harm would arise this would be broadly within the scope of the relevant policy provisions, including the existing and revised suite of NPSs.
- 5.3.15. In conclusion, having had regard to the submitted LIRs, prescribed matters and all important and relevant matters, we find that the benefits of the Proposed Development, most particularly in terms of its contribution towards the generation of renewable energy, would outweigh the adverse impacts that we have identified. Consequently, the potential harm is outweighed by the benefits of the Proposed Development in meeting Government policy, including that set out in 2011 EN-1, 2023 draft EN-1 and 2023 draft EN-3. Looking at the relevant NPSs in the round, we conclude that the Proposed Development accords with them when considered as a whole.
- 5.3.16. The Proposed Development would also be in general accordance with the NPPF when considered as a whole. We have found that the Proposed Development would conflict with particular Development Plan policies, including those that require the preservation of landscape character and visual amenity, the avoidance of harm to the use or enjoyment of green infrastructure, the protection of food production and the agricultural economy, and the requirement for the support of the local community. However, given that the Proposed Development is a Nationally Significant Infrastructure Project, we attach greater weight to our findings in relation to the NPSs.
- 5.3.17. We conclude overall that, on the basis of these considerations, there is a convincing case for development consent to be granted.
- 5.3.18. We carry this conclusion forward to my consideration of CA and TP proposals and objections to these in Chapter 6 and in our consideration of the draft DCO in Chapter 7 below.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application includes proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights. The case for CA and TP is examined in accordance with the tests in the Planning Act 2008 as amended (PA2008).

6.1.2. This Chapter follows the structure set out below:

- Legislative requirements
- The request for CA and TP powers
- The purposes for which land is required and scope of powers sought
- Examination of the CA and TP case
- Other considerations
- Conclusions

6.2. LEGISLATIVE REQUIREMENTS

6.2.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.2.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, DCLG's 2013 Guidance ("the CA Guidance") indicates that the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.2.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) and (4) are met, namely:

- That the application for the order included a request for CA of the land to be authorised; or
- That all persons with an interest in the land consent to the inclusion of the provision; or
- That the prescribed procedure has been followed in relation to the land.

6.2.4. Section 127 of the PA2008 applies to Statutory Undertaker (SU) land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

- 6.2.5. Furthermore, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good.
- 6.2.6. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates.
- 6.2.7. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.
- 6.2.8. s115(2) of the PA2008 provides that, in addition to the development for which consent is required under Part 3 PA2008 (the principal development), consent may also be granted for associated development. PA2008 defines associated development as development which is associated with the principal development.
- 6.2.9. The Neighbourhood Planning Act 2017 includes several provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the explanatory notes that accompany the Act. Whilst on this basis it is not necessary to assess the proposal against these provisions, they provide a useful indication of how Parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers.
- 6.2.10. Several general considerations from the CA Guidance also have to be addressed, including:
- Whether all reasonable alternatives to CA have been explored;
 - Whether the Applicant has a clear idea of how it intends to use the land subject to CA powers;
 - Whether the Applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - Whether the SoS is satisfied that the purposes stated for CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.2.11. We have taken all relevant legislation and guidance into account in our reasoning below and relevant conclusions are drawn at the end of this chapter.

6.3. THE REQUEST FOR CA AND TP POWERS

6.3.1. The Application draft DCO and all subsequent versions include provision for CA of freehold interests and private rights, the creation of new rights over land and provisions for the TP of land. The Applicant's final preferred draft DCO [[REP9-005](#)] was submitted close to the end of the Examination.

6.3.2. None of the land included in the CA request is Crown Land, National Trust Land, Open Space or common land.

6.3.3. The original Application included several documents that set out the land and rights sought by the Applicant together with the related reasons and the basis under which compensation would be funded. By the close of the Examination, the up-to-date versions were as follows:

- Statement of Reasons (SoR) [[AS-009](#)];
- Book of Reference [[REP10-004](#)];
- Land Plans [[REP9-004](#)], Works Plans [[REP7-005](#)], Access and Rights of Way Plans [[REP7-006](#)]; and
- Funding Statement [[APP-022](#)].
- Explanatory Memorandum [[REP9-007](#)]

6.3.4. We were kept up to date by the Applicant on the progress of negotiations with Affected Persons (APs) and Statutory Undertakers (SU) by means of a Schedule of Negotiations and Powers Sought, a final version of which was submitted towards the end of the Examination [[REP9-010](#)].

6.3.5. These documents, along with representations made by all parties, taken together form the basis of our assessment in this chapter.

6.3.6. Land over which CA and TP powers are sought is referred to in this Chapter as the Order land.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED AND SCOPE OF POWERS SOUGHT

6.4.1. The purposes for which the CA and TP powers are required are set out in the SoR [[AS-009](#)]. The Order land comprise land proposed for the Solar PV site (including new substation), the Grid Connection Route, Mitigation and Enhancement Areas, Construction Compounds, and some areas for highways works or access.

6.4.2. Paragraph 1.5.1 of the SoR explains that the Statement of Need [[APP-202](#)] describes the meaningful and timely contributors offered by the Proposed Development to UK decarbonisation and security of supply, whilst helping lower bills for consumers throughout its operational life, will be critical on the path to Net Zero. It goes onto say that without the Proposed Development, a significant and vital opportunity to develop a

large-scale low-carbon generation scheme will have been passed over, increasing materially the risk that future Carbon Budgets and Net Zero 2050 will not be achieved.

6.4.3. The powers sought are for:

- The acquisition of all interests in land, including freehold, shown edged red and shaded pink on the Land Plans (Article 20 of the draft DCO);
- Permanent acquisition of new rights, shown edged red and shaded blue on the Land Plans (Article 22); and
- Temporary use of land to permit construction or maintenance, including where the Applicant has not yet exercised powers of compulsory acquisition (Articles 29 and 30) and extinguishment and/or suspension of rights (Article 23) and overriding of easements and other rights (Article 26) – shown edged red and shaded yellow on the Land Plans.

6.4.4. The Applicant states that in the absence of these powers, the Order land may not be assembled, uncertainty will continue to prevail, and its objectives and government policy objectives would not be achieved.

6.4.5. Paragraph 1.4.4 of the SoR explains that the Applicant has been seeking to acquire the relevant freehold interests, new rights and temporary use of land by private treaty, in order to ensure implementation of the Proposed Development. The Applicant has entered into voluntary option agreements with the freehold owners of the majority of the Order land for the Solar Farm Site, to allow for the construction, operation and decommissioning of the majority of the Order land. For the remaining freehold owners, for the substation site and further cable routes, the Applicant has entered into Heads of Terms for the land or rights required and is actively negotiating to secure these interests.

6.4.6. The Applicant expects that further agreements should be in place for the additional land within the Order land imminently. Whilst seeking compulsory acquisition powers, the Applicant will continue to seek to acquire the land, the rights and other interests in, on and over the land, the temporary use of land, as well as secure the removal of matters affecting the Order land that may impede the Proposed Development, wherever possible. It considers that this approach of seeking powers of compulsory acquisition in the Application for the Order and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the CA Guidance.

6.5. EXAMINATION OF THE CA AND TP CASE

The Examination process

6.5.1. In examining the application, we considered all written material in respect of CA and TP. We asked questions of the Applicant, APs and SUs in ExQ1 [[PD-008](#)] and ExQ2 [[PD-014](#)]. In addition, we held two Compulsory Acquisition Hearings (CAH) where oral representations were

heard and relevant issues were explored in further detail [[EV-017](#) and [EV-052](#)].

6.5.2. We carried out unaccompanied and accompanied site inspections [[EV-001](#), [EV-001a](#) and [EV-001b](#)] as set out in paragraph 1.4.17 of this report.

6.5.3. By the end of the Examination, there were no outstanding objections from any Statutory Undertaker. However, objections and concerns have been raised by both APs and IPs regarding CA and TP matters. These are considered later in this chapter.

General considerations

6.5.4. The Applicant's general case for CA and TP is set out in its Statement of Reasons [[AS-009](#)] under the following headings:

- Source and scope of powers sought in the Order (Section 5);
- Purpose of the powers (Section 6);
- Justification for the compulsory acquisition powers (Section 7);
- Human rights (Section 8);
- Special considerations affecting the Order Limits (Section 9); and
- Conclusions (Section 12).

6.5.5. The Applicant's conclusions include that:

- The requirements of Section 122 of the PA2008 are met as well as the considerations in the CA Guidance;
- The powers sought are required for the purposes of, to facilitate, or are incidental to, the Proposed Development and are proportionate and no more than is reasonably necessary;
- There is a compelling case in the public interest for the land or rights over the land to be subject to CA given the meaningful and timely contributions offered by the Proposed Development to UK decarbonisation and security of supply, whilst helping to lower bills for consumers;
- All reasonable alternatives to CA have been explored;
- The proposed interference with the rights of those with an interest in the Order land is for a legitimate purpose and is necessary and proportionate to that purpose. The very substantial public benefits to be derived from the proposed CA would decisively outweigh the private loss that would be suffered by those whose land or interests are to be acquired, and therefore justifies interfering with that land or rights; and
- There is a reasonable prospect of the requisite funds being available.

General considerations regarding alternatives and site selection

6.5.6. The CA Guidance provides that Applicant's should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme have been explored). Mallard Pass Action Group (MPAG) [[REP2-090](#)] and others have expressed concerns

regarding alternatives including that the Applicant has made no effort to explore alternatives at an earlier stage.

- 6.5.7. The Applicant's approach to alternatives in relation to CA is set out in paragraphs 7.5.3 to 7.5.14 of its SoR. It notes that the location and extent of land and rights has been carefully considered and designed to take the minimum amount of land required whilst ensuring that the Proposed Development continues to meet the project benefits. It considers that none of the alternatives or modifications considered for the Proposed Development would obviate the need for powers of CA and TP over the Order land.
- 6.5.8. As we set out earlier in Chapter 3 of our report, we are generally satisfied with the Applicant's overall approach to the consideration of site selection and of alternatives. Issues have been raised regarding the overall scale and extent of the land required for the Proposed Development (which is greater than several other consented or proposed large solar farms) along with the choice of individual field parcels, However, as we set out in Chapter 3, it appears to us that these matters have been reasonably and proportionately considered by the Applicant taking account of the particular considerations in this case, including the proximity to an available grid connection, levels of irradiance, site topography along with relevant environmental considerations. Such considerations also include the avoidance of certain areas of BMV agricultural land (for example whole fields of Grade 2 land), issues regarding the proximity to heritage assets and the need for the creation of areas of the Order limits required to mitigate against adverse effects.
- 6.5.9. We have questioned the size and extent of the skylark mitigation areas as discussed in detail at CAH2 [[REP7-035](#)]. These are required to offset the loss of existing areas used by nesting skylarks within the proposed solar PV areas. The areas indicated for skylark mitigation (and CA) are much larger than the smaller areas required for each skylark plot (16 to 24 sqms), with retained agriculture around them. However, we accept that the size of areas indicated for such mitigation are reasonable taking into consideration the particular requirements of the skylark plots and their surroundings in order for this mitigation to be properly secured and managed in accordance with the Outline Landscape Environmental Management Plan [[REP7-021](#)]. Skylark plots are also considered further in section 3.4 of this report.
- 6.5.10. We also acknowledge the flexibility sought within the Proposed Development at this time, the benefits of overplanting and the Applicant's justification on overplanting not being a substitute for the absence of storage in this case, as considered in further detail in Chapter 3. We agree that a smaller scheme would not deliver the same generation capacity and therefore have a lesser overall benefit. Thereby any reduction in the size of the scheme would not be reasonable in this context.
- 6.5.11. The Applicant has indicated that the final detailed design of Proposed Development might lead to some areas currently shown for proposed PV

arrays being able to be reduced, this being dependent on the detailed technology and environmental factors known to the Applicant at that time.

- 6.5.12. Town Legal LLP, on behalf of Mr R Williams [[REP7-062](#)], argued that it is unclear why the Applicant could not have undertaken its detailed design in advance of the Application. Given the inherent flexibility built into the proposals forming part of this application, we are satisfied that the areas subject to CA are reasonably required for the Proposed Development based on the information known to the Applicant at this stage. Indeed, paragraph 4.2.11 of 2023 draft EN-1 recognises that in some instances it may not be possible at the time of the application for all aspects of the proposal to have been settled in precise detail.
- 6.5.13. We have also acknowledged the ability and commitment of the Applicant, where possible, to reach voluntary agreement with several landowners, noting that the Order limits covering a relatively small number of individual landowners. The Applicant considers that the use and application of the CA powers sought would be a last resort to secure the land and rights needed for the Proposed Development. We find this approach to be reasonable.
- 6.5.14. We consider further specific points raised by APs and IPs in relation to possible alternatives later in this chapter.

Availability and adequacy of funding

- 6.5.15. The Applicant's Funding Statement [[APP-022](#)] confirms that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation, as applicable. It explains that CS UK Holdings III Limited (Canadian Solar) is the funder of the scheme including constructing and maintenance, it also confirms that Canadian Solar has sufficient funds to implement the Scheme (including compulsory acquisition compensation costs).
- 6.5.16. Some concerns were raised during the Application by IPs in relation to the Applicant's ability to provide the necessary funding. In the Applicant's response to our ExQ1 4.0.6 [[REP2-037](#)], it provided a worst case estimate of the costs anticipated for using CA powers (£38 million) should all the powers sought be required, as part of the overall estimated for the Proposed Development as a whole (£245 million). As part of its response, the Applicant also provided Canadian Solar's (the Applicant's parent company) latest financial report to demonstrate that adequate funding is available and pointed towards its history of successfully financing a large number of other solar projects.
- 6.5.17. Article 44 (Guarantees in respect of payment of compensation) of the draft DCO [[REP9-005](#)] restricts the undertaker from exercising the CA/TP powers in the Order until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order.

- 6.5.18. Based on the information provided, we are satisfied that the necessary funds would be available to the Applicant to cover the likely costs of CA.

Conclusions on generality of case for CA and TP

- 6.5.19. We agree with the Applicant's conclusions on the generality of the case for CA and TP. However, our overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed. These are considered below.

Proposed cable crossing of East Coast Mainline (ECML) Railway

Background to the proposed options

- 6.5.20. The Application, as originally submitted, included three options for the cable crossing of the ECML, as shown in Figure 5.8 of the ES [[APP-128](#)]. The Applicant's and Network Rail's (NR) preferred option is Option 2 which would utilise existing northern arch/culvert of Bridge 198 between Field 20 and Field 27. During the Examination, the Applicant confirmed that it does not intend to pursue Option 3 (Horizontal Directional Drilling under the ECML) leaving two options (the use of the arches beneath the railway – its preferred option, or the use of the existing road bridge along the A6121 through Essendine).
- 6.5.21. Drawings to illustrate the arrangement for the arches option were provided following CAH1 [[Appendix B of REP4-042](#)].
- 6.5.22. The cable route option through Essendine would follow the A6121, past numerous residential properties and crossing via the road bridge over the ECML. The plots for where cable rights are sought (plots 02-51b, 02-52b and 02-54 to 02-147) are shown on Sheet 2A of the Land Plans [[REP9-004](#)]. Whilst it is highway land that would be directly affected by these works, those residents with property fronting the highway have been included as Category 1 affected persons due to being reputed owners of subsoil to half the width of the highway.
- 6.5.23. At CAH2 [[REP7-035](#)] the Applicant explained that notwithstanding the agreement of Protective Provisions and a Framework Agreement, NR will still require various approvals, sign-offs and clearances pursuant to these documents to be taken, before the Applicant can commit to the cables being only routed through the existing railway culvert. It says that it would only be able to fully commit to the culvert option following its detailed design work which would not be completed until the post DCO consent stage. Until then the Applicant says that it still needs to retain the flexibility of two options, with the Essendine route being its 'backstop'.
- 6.5.24. The Applicant has committed to update the SoS on this matter as it expects to have agreed an Option for Easement with NR (as well as PPAs' and Framework Agreement) soon after the Examination. The Applicant has provided without prejudice alternative DCO drafting that it considers would be appropriate to be added once an Option for Easement

agreement has been signed with NR (as well as the PPAs and Framework Agreement) before the end of the decision period. This would make clear that when one option is chosen, the CA powers could not be used for the other option. This wording is intended to make clear that when one option is chosen, the CA powers cannot be used for the other option. What it would not do, however, is commit the Applicant to the ECML culvert crossing option.

6.5.25. This drafting [see response to Q4.0.2 - [REP8-020](#)] would be inserted into Article 22 (Compulsory acquisition of rights) as a new Article 22 (3) and (4):

(3) The undertaker may only exercise the power conferred by paragraph (2) for one of the following two options in respect of the carrying out of Work No. 4 to cross the East Coast Mainline railway line-

(a) the land comprising plots 02-51b, 02-52b and 02-54 to 02-147 as shown on the land plans; or

(b) the land comprising plots 02-139, 02-140, 02-149, 02-151 and 04-22 as shown on the land plans.

(4) Where the undertaker serves notice to treat under section 5 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either sub-paragraph 3(a) or subparagraph 3(b), it must at the same time serve on the owners of the land of the other option, a notice specifying that powers under this article cannot be exercised over that land under this Order.

6.5.26. On the face of it, it is not particularly clear to the ExA what the impediment would be to using an existing archway/culvert under the railway line for the proposed cabling. Or why this matter was not able to be more satisfactorily clarified before the submission of the Application and, at least, by the end of the Examination.

6.5.27. However, when questioned on possible further drafting to make clear that the culvert is the preferred option, the Applicant replied that it is important that it has the ability to make a choice, as even if outline design approval is given, a range of agreements and approvals subsequent to them will need to be entered into with NR, and it is not appropriate that a key part of the Proposed Development is beholden to the actions of NR.

6.5.28. NR's final submission on the matter at Deadline 5 [[REP5-039](#)] stated that once the basic asset protection agreement is entered into and discussions commence, a timetable for progression can be considered. The private side agreement anticipates entry into cable crossing agreements in due course (subject to any requirements of NR's asset protection team and subject to satisfactory clearance conditions). NR, however, declined to answer the part of our ExQ2 4.0.3(b) [[PD-014](#)] asking what outstanding issues or impediments there were with regard to the implementation of the archway option.

6.5.29. We go on to consider the Essendine A6121 option below in the context of representations made during the Examination.

Consideration of issues raised by APs and others to the Essendine A6121 cable option

- 6.5.30. Numerous Relevant Representations and subsequent Written Representations were submitted setting out objections to the Essendine option, including from APs and others potentially affected by the proposed acquisition of new rights. The Applicant's response to relevant representations [[PDA-012](#)] and subsequent response to Interested Parties Deadline 2 Submissions – Land Issues [[REP3-027](#)] include lists and summaries of the Relevant Representations and Written Representations from APs adjacent to the A6121 and others regarding this issue. The final Schedule of Negotiations and Powers Sought [[REP9-010](#)] also provides details.
- 6.5.31. The proposed cabling option through Essendine would inevitably result in some short-term disruption and disturbance for local residents, including those whose land interest would be affected, albeit to a limited degree by virtue of it extending onto highway land.
- 6.5.32. Essendine Parish Council (EPC) submitted several representations objecting to the CA powers sought in Essendine on behalf of itself and affected residents [including [RR-0329](#), Written Representation: [REP2-057](#) and Summary of Representations at CAH1: [REP4-050](#)]. Its representations include matters regarding the effect on pedestrian and vehicle access to properties, access to Essendine children's playground and safety implications, in addition to the general disturbance for local residents. EPC considers that the Essendine option should be removed from the Application given the availability another option under the ECML.
- 6.5.33. MPAG whilst also not itself an AP, submitted several representations on this matter on behalf of local residents including in section 9 of its Written Representation [[REP2-090](#)] The matter was also discussed with further oral representations made at CAH1 [[EV-017](#)] and CAH2 [[EV-052](#)].
- 6.5.34. In response to concerns raised, the Applicant has updated the outline CEMP (Table 3.4) [[REP8-009](#)] to include provision for:
- The programme for cabling works within the detailed CEMP;
 - The cabling methodology and traffic management measures for approval of the relevant planning authorities;
 - A Community Liaison Officer to engage with the community, including discussion of access arrangement for affected properties;
 - The maintenance of access to residential properties (except where trenches are being constructed directly in front of a property);
 - Access to the playground to provided at all times; and

- To ensure access is retained along the access track of Mallard Point during construction (see also the Beamish’s objections below).

6.5.35. The cable route through Essendine would inevitably lead to some disruption for affected local residents, albeit on a short-term basis for the estimated five-to-six-week construction period. Whilst the alternative ECML crossing would clearly be preferable, we consider that the A6121 option is reasonably required to facilitate the Proposed Development based on the current position of the Applicant’s negotiations with NR. We are satisfied that the measures proposed by the Applicant would serve to reasonably reduce the effects on APs and others.

Further alternative cable option proposed by Mr Beamish

6.5.36. At CAH2 Mr Beamish proposed a further alternative cable route option going around the top of Essendine through farmland, crossing the main road twice and Pickworth Lane and over a railway bridge (Manor Farm access bridge), that would avoid the need to lay cable along the A6121 in Essendine.

6.5.37. The Applicant responded to this in its post-hearing submissions [[REP7-035](#)] explaining that the Manor Farm access bridge had previously been considered, but considered that the removal of the bridge was a high possibility and it was expected that it would unlikely to be allowed by Network Rail due to the age of the bridge and the problem with constructing at any kind of depth through the deck of the bridge. It would also involve more cabling on third party land. This option was not therefore taken forward due to the high risks involved.

6.5.38. On the basis of the evidence before us, it appears to us that the Applicant’s justification for not pursuing this option is reasonable.

Conclusion on ECML crossing options

6.5.39. Whilst the ECML culvert option is preferable to avoid disturbance that would result from the A6121 Essendine option, the Applicant still requires the flexibility of two options, so that if NR does not agree to an aspect of the detailed design for the use of the culvert/archway, then the Applicant can still use the Essendine option. We consider that the Applicant has introduced measures to reasonably minimise effects on APs and others. We also consider that, given the current position on discussions between the Applicant and NR, it is reasonable for both options to remain within the DCO.

6.5.40. Further to the objections to the Essendine A6121 option, we are satisfied from the evidence before us that the relevant land is required to facilitate or is incidental to the development and that there is a compelling case in the public interest for the proposed acquisition of the new rights.

6.5.41. We go on to consider this matter in the context of the dDCO in Chapter 7, under the section on Article 22 (Compulsory acquisition of rights).

Mr R Williams (part of the Williams family)

Representations: [REP2-034](#), [REP3-053](#), [REP4-066](#), [REP5-046](#), [REP7-070](#).

Plot References: 01-01 (all interests and rights) and 01-02, 01-05, 01-35, 01-36, 01-37, 01-37a, 01-44, 01-46, 02-02, 02-03, 02-04, 02-05 (acquisition of new rights).

- 6.5.42. Mr Williams (and his agent) made several written and oral representations during the Examination. These were not resolved by the end of the Examination, although Mr Williams does state in his Deadline 5 representation that negotiations are on-going and most terms have been agreed.
- 6.5.43. The Applicant's final Schedule of Negotiations and Powers Sought [[REP9-010](#)] records that since July 2023 the parties have been regularly exchanging documents. As of 10 November 2023, the parties have agreed all commercial points in respect of the lease and the Applicant states that there are now only a couple of minor outstanding points left to clarify on the option.
- 6.5.44. Mr William's main concerns are that the amount of land subject to CA is significantly greater than required for the project, matters regarding the permanent loss of the land that could arise from the powers sought, rent arrangements and the restoration of land at the end of a lease. In his final representation at Deadline 7, Mr Williams states that land areas of similar size to that which he (and his family) stand to lose do not often come to the market locally so there will undoubtedly be tax issues as well as rationalisation costs to incur if his family lose 19% of the land that they farm in the area. Mr Williams has not put forward a case, however, that farming operations on all the land owned locally would not be able to feasibly continue (and we have not found there to be such an issue in section 3.7 (Land use and soils) of our report.
- 6.5.45. In its response to ExQ2 4.0.8 [[REP5-012](#)] the Applicant explained that Plot 01-01 would provide approximately 50MW or 14.5% of the installed DC capacity of the Proposed Development and is therefore an integral part of the project. This plot is also necessary to access infrastructure to connect Field 3 to the highway to avoid using The Drift and to provide green infrastructure required as part of the outline Landscape Environmental Management Plan.
- 6.5.46. Taking these matters into consideration, we consider that Plot 01-01 forms an important and necessary part of the Proposed Development. In the case of the Williams land (and more generally) we consider that, taking account of the need for the project outlined elsewhere, there is compelling evidence that the public benefits would outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.5.47. There is also no compelling evidence before us that realistically suggests that the PV arrays proposed to be located within it could be

accommodated within the remainder of the Order limits on land not proposed for PV arrays. Our considerations in this respect have recognised the Applicant's design review process including the reasons why mitigation and enhancement areas are not suitable for PV arrays (including but not limited to protecting the setting of nearby settlements, the avoidance of PV arrays on entirely Grade 2 land and residential amenity).

- 6.5.48. Furthermore, whilst Mr Williams has suggested the use of other land outside of the Order limits near Braceborough, taking account of its proximity to properties in and near to Braceborough (including a Conservation Area and Listed Buildings) it does not appear to us that a reasonable or overriding case can be made for the use of this land as opposed to that selected for the final Order limits.

Post-decommissioning

- 6.5.49. There was also consideration during the Examination (including representations on behalf of Mr Richard Williams [[REP2-234](#), [REP5-046](#), [REP7-070](#)] whose family own part of the Order land), regarding what would happen to the land once the Proposed Development, or any part of it, has been decommissioned (pursuant to Requirement 18 (Decommissioning and restoration) of the draft DCO [[REP9-005](#)]. The Applicant clarified (contrary to its earlier position) that the Crichel Down Rules would not be applicable as they only apply to public bodies.
- 6.5.50. At Deadline 7, following previous discussions at CAH2 on the matter, Town Legal LLP on behalf of Mr R Williams [[REP7-062](#)] proposed wording that could be included in Article 27 of the DCO that would in effect make the Crichel Down rules applicable to the undertaker in this case. It was argued that when the land is no longer required for the scheme, then fairness requires that the original landowner is given the opportunity to re-purchase the land.
- 6.5.51. In response [Q4.0.5 of [REP8-020](#)], the Applicant strongly refutes the suggested alternative drafting. It states that there is no requirement or obligation in any guidance, statute or any other legal requirement for the Applicant to be subject to Crichel Down rules and that if the SoS wanted to introduce this requirement for this project, it would need to introduce it for all projects as this is a public policy decision.
- 6.5.52. We agree there is no overriding reason, including any policy justification or apparent precedent, for the Crichel Down rules to be applicable in this case, even when taking account of the position of Mr Williams and his family as the owners of local farming land, part of which would be the subject of CA under the Proposed Development.
- 6.5.53. We also note that the Applicant has strengthened the outline Decommissioning Environmental Management Plan [[REP10-008](#)] during the Examination, which we consider would ensure that land occupied by the Proposed Development is properly restored following the decommissioning of all, or any part, of it.

- 6.5.54. In Chapter 7 we consider further the matter of decommissioning, including the provisions of Requirement 18 (Decommissioning and restoration) of the final draft DCO [[REP9-005](#)]. We have also considered earlier in this section the position on the ownership of land following decommissioning.
- 6.5.55. We note that despite the representations made by Mr Williams, negotiations appear to be nearing completion. In any case, we conclude that the relevant land is required for the Proposed Development or is required to facilitate or is incidental to the development and that there is a compelling case in the public interest for the CA of the land and rights.

Mr and Mrs Beamish (Mallard Point Limited)

Representations: [RR-0043](#), [RR-0333](#), [RR-0677](#), [REP2-092](#), [REP2-117](#), [REP5-032](#), [REP5-033](#), [REP10-025](#), [REP10-028](#)

Plot references: 02-138a and 02-144 (acquisition of new rights)

- 6.5.56. Plot 02-144 is adjacent to the vehicular access point to Mallard Point Ltd (a vineyard and distillery). The Book of Reference records Mrs Fiona Beamish as reputed owner of subsoil to half the width of the highway. Plot 138a covers an access track adjacent to the northern edge of Mallard Point Limited with Mr and Mrs Beamish being recorded as having a right of way over it (it is used for their vineyard access).
- 6.5.57. Other than concerns not related to CA, Mr and Mrs Beamish have raised issues regarding the impacts of the proposed CA powers of the relevant plots on the access to and the operation of their businesses, including security matters in relation to a proposed permissive path adjacent to the vineyard access track. We also consider this matter further in section 3.9 (socio-economics).
- 6.5.58. Also of relevance here is our consideration of the matters discussed earlier in this section regarding the A6121 cable crossing option through Essendine that would lead to the acquisition of new rights affecting the Beamish's.
- 6.5.59. The Applicant has included specific provision in Table 3.10 of the outline CEMP [[REP8a-006](#)], to ensure the Applicant must liaise with Mr and Mrs Beamish to confirm access arrangements whilst any cabling works take place in the track.
- 6.5.60. At Deadline 10 Mrs Beamish noted that the Church Farm access may not be usable for a short period of time if cable works are required and that with daily business activities unable to take place, this will have a financial impact on the business. However, provision has made by the Applicant in the outline CEMP for on-going liaison (with for example agreement of temporary coverings for specific deliveries is sufficient advance notice is given) to minimise any short-term disruption to Mr and Mrs Beamish's separate Church Farm access.

- 6.5.61. Furthermore, in relation to security, the Applicant has amended the route of the permissive path adjacent to Mr and Mrs Beamish's land and access track.
- 6.5.62. Taking all these matters into account, we are satisfied that the land that the relevant land is required to facilitate or is incidental to the development and that there is a compelling case in the public interest the proposed acquisition of new rights affecting the Beamish's.

Mrs H Wooley

Representations: [RR-0408](#), [REP1-043](#), [REP2-238](#), [REP2-239](#), [REP4-067](#), [REP5-047](#), [REP7-071](#), [REP10-044](#).

Plot references: 01-14, 01-15 and 01-16 (temporary possession)

- 6.5.63. Plot 01-16 comprises 102 sqms of highway land in front of Mrs Wooley's property for which the Applicant seeks temporary possession during construction in association with vegetation clearance to achieve the required visibility splays to the secondary construction compound access which may need temporary traffic signals and temporary speed limit during these works. Plots 01-14 and 01-15, for which temporary possession is also sought, are located adjacent and just to the north of 01-16. The Applicant states that there are presumed subsoil interest as reputed owner of subsoil to half the width of the highway.
- 6.5.64. Mrs Wooley has raised issues regarding access to her property, including an access at Plot 01-18 (also subject to temporary possession proposals) to the south of Mrs Wooley's property, where she claims to have a right of access. She also raised concerns about the accuracy of the Applicant's land referencing in the vicinity of her property.
- 6.5.65. The Applicant has reviewed land referencing in the vicinity of Mrs Wooley's property and is satisfied that it is correctly recorded. From the evidence we consider this to be reasonable. The Applicant has also made provision within Table 3-4 of the outline CEMP for vehicular and pedestrian access to private residential properties to be maintained at all times where are being carried out to or in streets (with the exception when trenches are being constructed or reinstated directly in front of a property).
- 6.5.66. We are satisfied that these temporary possession powers sought would be proportionate and justified by the public interest in facilitating the Proposed Development.

Mr M Chapman

Representation: [RR-0771](#)

Plot reference: 01-11 (temporary possession)

- 6.5.67. In a similar vein to our considerations relating to Mrs Wooley above, we are satisfied that the Applicant has proposed reasonable measures to safeguard Mr Chapman's access and interests. We are therefore also

satisfied that the TP powers sought would be proportionate and justified by the public interest in facilitating the Proposed Development.

Plots 02-29 to 02-36 and 02-38 – Acquisition of rights [Sheet 2 of Land Plans [REP9-004](#)] along A6121 to west of Uffington Lane

- 6.5.68. At CAH2 MPAG [[REP7-059](#)] questioned why these plots need to be retained. This issue arose following the Applicant's confirmation at CAH2 that it no longer required the previously proposed CA powers relating to potential cable works for Plots on Pickworth Road (the relevant plans and draft DCO were amended to reflect this). A general concern about CA (Plot reference 02-33 (acquisition of new rights)) was also submitted in the Relevant Representation from Mrs Eaves [[RR-0030](#)].
- 6.5.69. The Applicant [[REP7-035](#)] explained that these plots are still required to provide working room for the installation of the cable from Plot 02-23. This is to reflect that it is unlikely that the cable will go straight from plot 02-23 to plots 02-34/02-36 due to the presence of vegetation at the southern edge of that field (although that has been kept as an option via HDD if plot 02-28 was not feasible for any reason). As such, it says that the cabling will pass through plot 02-028 and then along the A6121, necessitating the use of those plots to deal with any constraints in the road.
- 6.5.70. We are satisfied that these plots are required for the Proposed Development, are no more than is reasonably required for its purposes and that there is a compelling case in the public interest the proposed acquisition of new rights.

6.6. OTHER CONSIDERATIONS

Statutory Undertaker (SU) land, rights and apparatus

- 6.6.1. S127 of PA2008 applies to land acquired by SUs for the purposes of their undertaking, and places restrictions on the CA, or CA of a new right, of such land where a representation is made in relation to a DCO application and is not withdrawn by the close of the Examination of that application. The draft DCO includes provision to authorise the CA of land and rights held by SUs for the purposes of their undertaking.
- 6.6.2. If s127 applies CA of SU's land can only be authorised if the SoS is satisfied:
- that the land can be purchased and not replaced without serious detriment to the SU or, if purchased, can be replaced by other land belonging to or available for purchase by the SU without detriment; or
 - the right can be purchased without serious detriment to the SU or, any detriment to the SU, in consequence of the acquisition of the right, can be made good by the SU by the use of other land belonging to or available for acquisition by them.

- 6.6.3. S138 of PA2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 6.6.4. S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates.
- 6.6.5. The draft Order includes provision to authorise the extinguishment of a relevant right, or the removal of relevant apparatus belonging to statutory undertakers, in connection with the delivery of the Proposed Development. The exercise of such powers would be carried out in accordance with the protective provisions contained in Schedule 15 to the Order.
- 6.6.6. Section 9.3 of the Applicant's Statement of Reasons [[AS-009](#)] sets out the Applicant's position in relation to S127 and S138 of the PA2008 on submission of the Application. The Applicant has continued to engage with the SUs affected during the Examination to address matters raised in representations. The positions reached by the end of the Examination are included within the Schedule of Negotiations and Powers Sought [[REP9-010](#)]. The positions with SUs are also recorded in paragraphs 2.7 to 2.10 of the Applicant's final Statement of Commonality [[REP9-015](#)].
- 6.6.7. SoCG have been agreed and signed with the following SUs including confirmation of agreement of Protective Provisions and that there are no outstanding matters of disagreement:
- Anglian Water [[REP4-032](#)]
 - Environment Agency [[REP9-017](#)] (including with regard to the Gwash-Glen water transfer plant)
- 6.6.8. Objections have been formally withdrawn by Network Rail [[AS-018](#)] following agreement of Protective Provisions and a Framework Agreement and National Grid Electricity Distribution [[REP5-077](#)] following the completion of an asset protection agreement.
- 6.6.9. Protective Provisions in Schedule 15 of the draft DCO [[REP9-005](#)] have been agreed by the Applicant with:
- National Gas Transmission PLC (Part 3)
 - National Grid Electricity Transmission PLC (Part 4)
 - Environment Agency (Part 5)
 - Anglian Water Services Ltd (Part 6)
 - Network Rail Infrastructure Ltd (Part 7)
 - Cadent Gas Limited (Part 8)
- 6.6.10. There are no outstanding matters of relevance raised by any Statutory Undertaker at this stage. We are satisfied that the relevant Protective Provisions contained within Schedule 15 of the rDCO would ensure that an appropriate degree of protection would be given to the affected SUs,

such that there would be no serious detriment to the carrying out of their undertakings.

6.6.11. We conclude that the tests set out in subsections 127(3) and/or 127(6) (as appropriate) can be met.

6.6.12. In accordance with s138(4) we are satisfied that the extinguishment of the SU rights, and removal of the SU apparatus is necessary and proportionate for the purpose of carrying out the development to which the Order relates.

Human Rights Act 1998 and Equality Act 2010

6.6.13. The Human Rights Act 1998 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not EU institutions and are unaffected by the decision to leave the EU.

6.6.14. Relevant provisions of the ECHR that are normally engaged by CA and/or TP proposals include:

- Article 6 – the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal;
- Article 8 – the right to respect for private and family life and the home is relevant where property that is a home is affected;
- Protocol 1, Article 1 – the right to the peaceful enjoyment of property and not to be deprived of this other than in the public interest.

6.6.15. Section 8 of the Applicant’s Statement of Reasons [[AS-009](#)] deals with Human Rights. This includes consideration of compliance with the relevant provisions of the ECHR and fair compensation.

6.6.16. The Applicant states that the Order has the potential to infringe the rights of persons who hold interests in land within the Order land under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:

- the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order; and
- the interference with the convention right is proportionate.

6.6.17. The Order limits do not include, and the Proposed Development does not require the outright acquisition of any residential property. Consequently, as dwellinghouses would not be directly affected, it is not expected that rights protected by Article 8 will be infringed.

6.6.18. We consider that there has been fair opportunity for written and oral representations as part of our Examination, including through Written

Representations and at two Compulsory Acquisition Hearings [[EV-017](#) and [EV-052](#)].

- 6.6.19. Further to concerns raised and on behalf of local residents regarding pre-application consultation of the CA proposals [including Written Representations [REP2-090](#), [REP2-114](#) and [REP2-126](#)], the Applicant at Deadline 3 summarised the consultation it carried out [[REP3-027](#)] with further details also provided in its Consultation Report [[APP-025](#)].
- 6.6.20. Whilst we note concerns raised regarding the consultation, in particular, regarding the proposed cable route option through Essendine, we consider there to have been a fair and reasonable opportunity for affected persons to make representations on this during the Examination. We also note measures carried out by the Applicant prior to the submission of the Application and the subsequent additional publicity and public meeting organised by the Applicant in respect of the Essendine cable option. We conclude that the obligations in Article 6 are satisfied.
- 6.6.21. We have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, we consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. We therefore consider the CA and TP powers sought are compatible with the Human Rights Act.
- 6.6.22. S149 of the Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. We have had regard to this duty throughout the Examination and in my consideration of the issues raised in this report.
- 6.6.23. Overall, we find that the Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, we have found no breach of the Public Sector Equality Duty.

Crown Land and Special Category Land

- 6.6.24. Part 4 of the BoR [[REP10-004](#)] confirms that there are no Crown Interests and consequently s135 of the PA2008 does not apply.
- 6.6.25. Part 5 of the BoR also confirms that the CA proposals do not relate to any special category land and consequently s130, 131 and 132 of the PA2008 do not apply.

Operational time limit

- 6.6.26. In general terms, whilst the Applicant has introduced a 60-year operational time limit during the Examination, it was previously still envisaged that the scheme would be decommissioning at some point when no longer required. We do not consider that the introduction of the

proposed time limit makes a material difference to our conclusions on the relevant matters in this Chapter.

6.7. CONCLUSIONS

6.7.1. Taking account of all the information, submissions and representations before us, including the matters considered above, we have reached the following conclusions:

- The application site has been appropriately selected;
- All reasonable alternatives to CA have been explored;
- The draft DCO provides a clear mechanism whereby the necessary funding can be guaranteed;
- There is a clear need for all the land included in the BoR to be subject to CA or TP;
- There is a need to secure the land and rights required to construct the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance;
- The private loss to those affected has been mitigated through the selection of the land; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of PPs in favour of those affected;
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance;
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

6.7.2. Considering all the above factors together, we conclude that there is a compelling case in the public interest for the CA and TP powers sought in respect of the relevant land shown in the land plans.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. This section of the report describes the draft Development Consent Order (DCO) as applied for and the changes made to it during the Examination. It also describes matters that remained in dispute at the end of the Examination, our recommendations on those matters and changes to the draft DCO that would result.

7.1.2. This chapter is organised as follows:

- Introduction
- The DCO as applied for
- Changes during the Examination
- Consideration of outstanding matters
- Conclusion

7.1.3. The Applicant submitted a draft DCO [[APP-017](#)] with the application. An Explanatory Memorandum (EM) [[APP-018](#)] was also submitted to explain the purpose and effect of each article of, and schedule to, the draft DCO.

7.1.4. In response to issues raised and questions asked during the Examination, the Applicant subsequently submitted several revised versions of the draft DCO during the course of the Examination, with its final version [[REP9-005](#)] submitted at Deadline 9. An updated EM [[REP9-007](#)] was also submitted at that Deadline reflecting the changes made to the draft DCO. The submission version of the draft DCO and subsequent iterations are in the form of a statutory instrument as required by section 117(4) of the PA2008.

7.1.5. Written questions on draft DCO matters were included in our first and second round of ExA Written Questions [[PD-008](#) and [PD-014](#)]. Further questions were asked and issues discussed at the two Issue Specific Hearings on the draft DCO [[EV-016](#) and [EV-054](#)]. Towards the end of the Examination, we issued the ExA's commentary and questions on the draft DCO [[PD-018](#)].

7.1.6. To keep track of the evolution of the draft DCO, the Applicant submitted a Schedule of Changes recording all amendments made to it. This was updated throughout the Examination with a final version submitted at Deadline 9 [[REP9-024](#)].

7.1.7. A further useful reference is the Applicant's comparison of the application submission draft DCO with its final Deadline 9 submission [[REP9-030](#)].

7.2. THE DCO AS APPLIED FOR

7.2.1. The draft DCO as applied for [[APP-017](#)] included a number of provisions to enable the construction, operation, maintenance and decommissioning of the Proposed Development. Its general structure is set out below:

Articles

- Part 1 - Preliminary
- Part 2 – Principal powers
- Part 3 – Streets
- Part 4 – Supplementary powers
- Part 5 – Powers of acquisition
- Part 6 – Miscellaneous and general

Schedules

- Schedule 1 – Authorised development
- Schedule 2 – Requirements
- Schedule 3 – Legislation to be disapplied
- Schedule 4 – Street subject to street works
- Schedule 5 – Alteration of streets
- Schedule 6 – Public rights of way
- Schedule 7 – Access to works
- Schedule 8 – Traffic Regulation Measures
- Schedule 9 - Land in which only new rights etc may be acquired
- Schedule 10 – Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants
- Schedule 11 – Land of which temporary possession may be taken
- Schedule 12 – Hedgerows to be removed
- Schedule 13 – Documents and plants to be certified
- Schedule 14 – Arbitration rules
- Schedule 15 – Protective provisions
- Schedule 16 – Procedure for discharge of Requirements

7.2.2. Although there were numerous changes made to the draft DCO during the Examination, its broad structure did not change. We consider that the structure of the Applicant’s final draft DCO is fit for purpose.

7.3. CHANGES DURING EXAMINATION

7.3.1. This section sets out the most significant ways in which the draft DCO was changed by the Applicant during the Examination. There were also numerous minor typographical changes, corrections and drafting improvements. These are all recorded in the Applicant’s schedule of changes [[REP9-024](#)] and so it is not necessary to record them all here.

7.3.2. The most significant changes are set out in Table 2 below. These generally flowed from submissions from Interested Parties, responses to our Written Questions and discussions at Hearings.

7.3.3. We are satisfied that the majority of these changes are justified by the evidence before us and can be recommended for inclusion in the DCO if the SoS concludes that development consent should be granted. Where we have gone on to suggest further amendments to matters that were the subject of change in Table 2, these are reflected in section 7.4 and

Table 3 of our report below. We have also noted such occurrences under the 'ExA Comment' column in Table 2.

Table 2: Main changes made to the DCO during the Examination

Provision	Change	Reason for change
Article 2 Interpretation	Deadline 4 Definition of "authorised development" revised to omit the wording "any other development"	Responds to ExQ1 5.0.1 [PD-008] and discussion at ISH3 [REP4-040]
Article 2 Interpretation	Deadlines 4, 5 and 7 Definition of "maintain" amended	Follows discussion at ISH3. See our further consideration on 'maintain' in section 7.4 below
Article 12 Claimed public right of way	Deadlines 5, 7 and 9 Revised drafting, including to enable the Wildlife and Countryside Act 1981 process to be completed	Follows ExA written/oral questions and the Applicant's discussions with Lincolnshire County Council (LCC)
Article 16 Discharge of water	Deadline 5 Additional wording to ensure that discharged water does not enter the public highway	Following Rutland County Council (RCC) comments [REP4-046] at Deadline 4
Article 20 Compulsory acquisition of land	Deadlines 7 and 8 Revisions including deletion of Article 20 (1) (b) which stated that "use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking"	Further to Q4.0.1 of the ExA's Commentary and Questions on the draft DCO [REP8-020]
Article 22	Deadline 8	In response to Q4.0.3 of the ExA's Commentary and

Provision	Change	Reason for change
Compulsory acquisition of rights	Article 22(1) amended in relation to the acquisition of rights to include wording "for the purposes of access rights, cable rights and vegetation maintenance rights" rather than for "any purpose" as previously drafted with Article 22(7) added to refer to the definition of such rights in Schedule 9	Questions on the draft DCO [REP8-020] and previous discussions at ISH3 and ISH5
Article 23 Private rights	Deadline 4 Deletion of Article 23(2)(c) "on commencement of any activity authorised by the Order which interferes with or breaches those rights"	Further to discussions at CAH1 [REP4-042]
Article 34 Benefit of the Order	Deadline 3 Article amended to provide the undertaker and National Grid Electricity Transmission with the benefit of the Order for Work No.3	Amended as Work No.3 is entirely on NGET land so would allow NGET to carry out this work themselves
Article 35 Consent to transfer the benefit of the Order	Deadlines 3 and 5 Amendments including limitation to the exceptions where the consent of the Secretary of State is required (Article 35(3)(b)) and extending the notice period to the Secretary of State (Article 35(6)) from 5 to 14 working days)	Following ExA's ExQ2 (Q5.0.8(a)) [PD-014], the Applicant's response to which is provided in [REP5-012] Note that we consider it appropriate that reference to 'working days' is removed from Article 35(6) as reflected in Table 2 below

Provision	Change	Reason for change
<p>Article 38</p> <p>Felling or lopping of trees and removal of hedgerows</p>	<p>Deadlines 2, 5 and 7</p> <p>Various amendments including amending the power to fell or lop any tree or shrub to "within or overhanging land within the Order limits"</p>	<p>Following ExQ1 5.0.21 [REP2-037], ExQ2 5.0.9 [REP5-013]</p>
<p>Article 39</p> <p>Trees subject to tree preservation orders (TPO)</p>	<p>Deadline 2</p> <p>Deletion of entire Article</p>	<p>Following ExA's ExQ1 5.0.21 [PD-008] and local authorities confirmation that there are no TPOs within or adjacent to the Order limits</p>
<p>Article 43</p> <p>Procedure in relation to certain approvals etc.</p>	<p>Deadline 4</p> <p>Amendment to discharge period in 43(4) from six to eight weeks</p>	<p>To reflect the longer period provided in Schedule 16 (Procedure for discharge of requirements)</p>
<p>Schedule 1</p> <p>Authorised development</p>	<p>Deadline 2</p> <p>Revision of list of items under 'further associated development'</p> <p>Deadline 8</p> <p>Revise wording in final section to state "insofar as they are unlikely to <u>do not</u> give rise to any materially new or materially different environmental effects..."</p>	<p>To more neatly categorise these following ExA's ExQ1 5.1.1 [PD-008]</p> <p>In response to Q2.0.2 of the ExA's Commentary and Questions on the draft DCO [REP8-020] (but note our further conclusions below under section 7.4</p>
<p>Schedule 2</p> <p>Requirements</p>	<p>Amendments and additions at different deadlines to the following Requirements:</p>	<p>Further to various written and oral representations, and ExA questions</p>

Provision	Change	Reason for change
	3 (Phasing etc) 5 (Approved details and amendments to them) 6 (Detailed design approval) 7 (Landscape and ecology management plan) 8 (Fencing and other means of enclosure) 9 (Surface and foul water drainage) 10 (Archaeology) 12 (Operational environmental management plan) 13 (Construction traffic management plan) 14 (Soil management plan) 16 (Operational noise) 17 (Skills, supply chain and employment) 18 (Decommissioning and restoration)	
Schedule 4 Streets subject to street works	Deadline 3 Addition of PRoW BrAW/1/1 to Schedule 4 Deadline 7 Deletion of reference to cable works on Pickworth Road	To reflect Access and Rights of Way Plans [REP7-006] Following confirmation by the Applicant at ISH5 [REP7-037] that it no longer needs the option of cable works in Pickworth Road

Provision	Change	Reason for change
<p>Schedule 8</p> <p>Traffic Regulation Measures</p>	<p>Deadline 5</p> <p>Insertion of an additional temporary road closure on Pickworth Road</p> <p>Amendment of temporary speed limit on A6121 Essendine Road to 20mph</p>	<p>To reflect updated traffic regulation measures plans [REP5-048]</p> <p>Following discussion at ISH5 [REP7-037]</p>
<p>Schedule 9</p> <p>Land in which only new rights etc may be acquired</p>	<p>Deadline 5, 7 & 8</p> <p>Amendments to definitions of 'vegetation maintenance rights' and 'access rights'</p> <p>Amendments to plots</p>	<p>To provide clarity and allow for the route of a permissive path onto Bourne Road to change in line with the Green Infrastructure Strategy Plan [Appendix 2 of REP7-021]</p> <p>Plots amended to reflect the removal of the Pickworth Road cable option, the revised positioning of the permissive path onto Bourne Road and to allow the 'without prejudice' drafting to Article 22</p>
<p>Schedule 13</p> <p>Documents and plans to be certified</p>	<p>Various Deadlines</p> <p>Updated versions of various documents</p>	<p>To reflect the submission of updated documents</p>
<p>Schedule 15</p> <p>Protective provisions</p>	<p>Various Deadlines</p> <p>Updated protected provisions for the protection of Anglian Water, Cadent Gas, Environment Agency, National Gas Transmission, National</p>	<p>To reflect discussions with the various undertakers</p>

Provision	Change	Reason for change
	Grid Electricity Transmission, National Grid Gas and Network Rail.	
Schedule 16 Procedure for discharge of requirements	Various Deadlines Several amendments including those dealing with relevant time periods and fees	To reflect representations from and discussions with the local authorities and ExA questions (but note our further consideration of Schedule 16 below)

7.4. CONSIDERATION OF OUTSTANDING DCO MATTERS

7.4.1. This section addresses those matters that have not been agreed between any Interested Party (IP) and the Applicant by the end of the Examination, other matters of concern for the ExA including outstanding matters raised in our Commentary and Questions on the draft DCO [PD-018], along with other matters of clarification. Table 3 subsequently sets out those DCO provisions that we recommend are changed and are included in our recommended DCO (Appendix D).

Articles

Article 2 (Interpretation – ‘maintain’) and related matters

7.4.2. The definition of ‘maintain’ was subject to numerous ExA questions, submissions from IPs and was subsequently amended during the Examination. Most particularly, discussions focused on the potential of replacement solar panels being implemented during the operation period.

7.4.3. In essence, whilst it was generally appreciated that replacement of ‘broken’ individual panels as part of day-to-day maintenance was unlikely to lead to any significant effects, concerns were raised by IPs on the implications of widescale replacement of panels during the operation of the Proposed Development.

7.4.4. The concerns continued, including those arising from the Applicant’s introduction of a 60-year operational time period during the Examination. The 60-year operational period brought into focus the possibility that replacement panels would be required. The Applicant had previously explained at ISH1 [REP4-022] (before the 60-year operational period was introduced) that current limits in solar panel technology results in best-case scenario for the life span of solar panels to be 40-years, although it stated that this might increase by the time the project is constructed.

7.4.5. The Applicant's response to ExQ2 5.0.1 [[REP5-012](#)] sets out its reasoning on the 60-year time limit in the context of the 'maintain' definition. The Applicant explained that it does not intend to undertake large scale replacement of panels and noted that it has put in place sufficient controls that any replacement activities do not cause materially new or materially different environmental effects than those reported in the ES. Furthermore, paragraphs 2.2.2 to 2.2.6 of the Outline Operational Environmental Management Plan [[REP10-006](#)] now include provisions that:

- The Applicant will provide notification (not subject to approval) of planned maintenance activities to SKDC and RCC on an annual basis;
- Alongside this, the Applicant will provide supporting environmental and traffic information to evidence that there are no materially new or materially different environmental effects arising from the planned maintenance activities when compared to those identified in the ES (including confirmation that traffic movements will be no more than 5 daily HGV two-way movements); and
- Where the maintenance schedule involves the replacement of solar panels or solar stations, those activities cannot take place until SKDC or RCC have provided confirmation that they agree that the activities will not lead to materially new or materially different environmental effects to those identified in the assessment of the operational phase in the ES.

7.4.6. The matter was further discussed in some length at ISH5 [[EV-054](#)] including the matter of the extent of replacement panels that might take place during the operation period. At ISH5, in response to our questions along with submissions from MPAG [[REP7-056](#)] that there would need to be wholesale replacement of panels during operation, the Applicant [[REP7-037](#)] said that on the basis of current technology there would likely be two cycles of panels within the 60-year operational period but reiterated its position that it would not be able to replace all panels at the same time and that the controls in place were adequate to ensure that the activities do not lead to adverse effects. The Applicant also stated that if it did want to replace the panels wholesale then this would need an application to amend the DCO.

7.4.7. By the end of the Examination, MPAG maintained, in Section 6 of its Final Position Statement [[APP10-024](#)], its concern that if panels and piles are to be replaced, along with other electrical infrastructure and fencing, it would not be logistically and economically viable to drip feed the changes in an ad hoc way. It says that it would be easier for the Applicant to push through material changes taking account of the limited resource of Councils to contest, monitor or take enforcement action on any non-compliance.

7.4.8. In its Closing Submissions [[REP10-013](#)], the Applicant concludes that how it goes about maintenance during operation is its own choice, undertaken in light of the restrictions in place to ensure no negative

effects from maintenance, and that any breach is a breach of the DCO and can be enforced accordingly.

- 7.4.9. Although they had earlier concerns regarding the definition of 'maintain', LCC, RCC and SKDC are now generally satisfied that, with the controls in place, including in the outline OEMP, the definition of maintenance is satisfactory (notwithstanding separate concerns regarding the operation period which we consider in Chapter 3).
- 7.4.10. We consider that the Applicant's position on the need for panel replacement has not been entirely clear during the Examination. Nevertheless, we are satisfied that with the relevant controls in place which are secured by the draft DCO, the likely maintenance activities including replacement panels would not result in any significant adverse effects. Albeit that activity would be required over a considerable period of time should the replacement of a large number of panels be required during the operation phase.
- 7.4.11. Although the wording 'not....replace the whole of Work No.1 at the same time' begs questions of the implications of replacing, for example, 90% of the panels at any one time, the controls that have been added do provide what we consider to be appropriate certainty that the effects cannot not exceed those reported in the ES, concluding that there would be no significant effects during operation. We do not therefore recommend any further changes to the definition of 'maintain'.
- 7.4.12. Furthermore, given the controls that are in place, we do not consider there is justification for MPAG's suggestion that, in the context of the 'maintenance' definition, 'day to day maintenance' needs to be split out from the replacement of panels. We note that any future proposal to carry out wholesale or even substantial replacement of panels at any one time, which exceed the controls put in place and secured by the draft DCO, would require future consideration and further approval.
- 7.4.13. We acknowledge that the issue of and need for comprehensive replacement panels, including the extent of panels needing to be replaced, does not appear to be an issue that had been fully thought through by the Applicant in its original application. This has come further to the fore in the context of the implications of the Applicant's 60-year operational time limit, from which questions arose regarding the need for a wholesale replacement of panels across the site and when this would occur. Under the draft DCO drafting, this would need to be done on a gradual basis so as not to exceed the reported environmental effects during operation reported in the ES.
- 7.4.14. We, otherwise, consider the general acceptability of the Applicant's 60-year operational time period in section 3.1 of our report.

Article 6 (Application and modification of statutory provision)

- 7.4.15. With regard to s150 of the Planning Act 2008, the ExA notes that the Environment Agency [[REP8-027](#)], Rutland County Council (as Local Lead Flood Authority) [[REP9-022](#)] and Upper Witham Drainage Board (as

Internal Drainage Board and acting as agent for LCC as Local Lead Flood Authority) [[REP9-041](#)] have consented to the disapplication of relevant statutory provisions under Article 6. No amendments are therefore required to this Article.

Article 9(3) (Power to alter layout, etc of streets)

- 7.4.16. We questioned whether it is appropriate for the DCO to include a general provision for altering the layout of any street outside of the Order limits, given that such works would not be included in the scope of development consent for the authorised development to be carried out within the Order limits under Article 3. The Applicant contends [page 10 of [REP8-020](#)] that it would provide the ability to deal with unknown issues that arise on large infrastructure projects in a timely manner and that our suggested change could lead to wholly disproportionate outcomes, for example the whole of the DCO could be prevented from coming forward because of a need to allow a kerb line to facilitate abnormal indivisible load movements and then having to wait for multiple consents to amend a single kerb-line and that it goes against the one stop shop 'NSIP' consenting approach.
- 7.4.17. Nevertheless, we consider that whilst any relevant works would be subject to prior approval, we do not consider it appropriate for the DCO to include such a wide general provision for street works outside of the Order limits and that, with appropriate forward planning, the need to gain any separate (currently unforeseen) consent for such minor works should not cause any material impediment to the implementation of the Proposed Development.
- 7.4.18. The ExA notes that the Applicant's reference in its Explanatory Memorandum [[REP9-007](#)] to similar precedents in the Drax Power (Generating Stations) Order 2019 and the Great Yarmouth Third River Crossing DCO 2020. However, in both cases there does not appear to be a similar explicit reference in the relevant articles of those Orders to works to alter streets generally outside of the Order limits.
- 7.4.19. Therefore, in the circumstances of this case we do not consider there to be a reasonable justification for this provision for works generally outside of the Order limits and recommend that Article 9(3) is amended as set out in Table 3 below.

Article 12 (Claimed public rights of way)

- 7.4.20. This is a novel article seeking to deal with a claimed public right of way (PRoW) [[APP-016](#)] that is currently subject of a Definitive Map Modification Order (DMMO) application to LCC. The Applicant considers it prudent for the Order to deal with it to provide certainty about what would happen should the new right of way be created. The Article has been extensively revised during the Examination following LCC's initial consents and the drafting has now been agreed by LCC. It allows for the DMMO application process to run its course and reach its conclusion. If a new right of way should be created as a result of the process, then the

Applicant can use the powers under the Article to stop it up as the need arises.

- 7.4.21. We consider separately the effects of any future stopping up of the claimed PRoW in the socio-economic section (3.9) of our report. No representations have been received during the Examination from any other party in relation to the provisions of Article 12. In effect, the Article is similar to a DCO Article that seeks to stop up an existing PRoW. Taking into consideration the agreement of LCC to the revised drafting, we are satisfied with and do not recommend any further amendments to Article 12.

Article 22 (Compulsory acquisition of rights)

General

- 7.4.22. During the Examination we questioned the broad drafting of this Article. In addition to the CA of rights set out in Schedule 9 (Land in which only new rights etc. may be acquired) it would, through 22 (1), create a more general provision enabling the CA of new rights over the Order land as may be required for the authorised development (subject to Article 29 (temporary use of land for constructing the authorised development)). We also asked how the persons with an interest in the Order land have been made aware that undefined new rights are potentially being sought over all the Order land.
- 7.4.23. The Applicant explained in its response to our ExQ1 5.0.17 [[REP2-037](#)] that power to CA rights also applies in relation to land in which CA is proposed and that there is no requirement to limit the extent of rights that can be CA where the land can also be CA outright as the CA of rights is 'lesser property interest' than freehold acquisition. It goes on to explain that where the land is also subject to CA, it is not required to draw attention to the lesser CA power. However, it has taken pro-active steps to engage with persons impacted by the CA of land or rights through formal engagement and informal engagement.
- 7.4.24. The Application provided further reasoning for its position in its response to our ExQ2 5.0.6 [[REP5-012](#)]. This includes explanation that at the consultation stage it did not identify what powers relate to specific areas of land within the Order limits, as this was still under development and that there is no requirement to go to that level of detail. It says [[REP7-037](#)] it is possible that parts of the Proposed Development could proceed using only rights (for example where only cabling is required) rather than full CA and that limiting Article 22 to only the acquisition of rights as set out in Schedule 9 would result in it resorting to CA of land during operation for plots not included in Schedule 9, despite only the lesser property interests being required.
- 7.4.25. Finally, in the Applicant's response to Q4.0.3 of our draft DCO commentary and questions [[REP8-020](#)] where we indicated that it may be appropriate to amend Article 23(1) to remove the general power to 'impose such restrictive covenants over the Order land', the Applicant

explained that it may need restrictive covenants to, for example, to ensure there was no building on top of cables or to prevent vegetation being removed. However, notwithstanding this and that Article 22(1) is intended to provide for unknown issues that may arise as the project progressed, the Applicant has amended the wording to limit the power to existing powers sought for cable rights, access rights and vegetation maintenance rights, so that there is clarity on the types of rights and restrictive covenants that may be imposed.

- 7.4.26. We note that a similar Article to that proposed here (including a general provision for the acquisition and creation of rights) is preceded elsewhere, including the recently made Longfield Solar Farm Order 2023 and The Cleve Hill Solar Park Order 2020. We note that whilst Article 22(1) is general in its scope, taking account of the current flexibility in the scheme design at this stage, the Applicant has not been able to more specific on where and what rights and covenants may be necessary.
- 7.4.27. It follows that consultation on these matters has been general rather than specific. The amendment made to Article 22(1) referred to above is to a degree helpful to limit the power to align with the purposes set out in Schedule 9 – albeit this relates to specific plots rather than the broad approach in 22(1). We also acknowledge and give some weight to the Applicant’s argument that would it amount to ‘lesser property interest’ being sought, albeit that it would not restrict the ability of Affected Persons to plan ahead, as they would not know if land if the freehold of land is to be CA or whether just rights/covenants would be relevant.
- 7.4.28. Bearing in mind the existing precedents and the reasoning provided by the Applicant in this case, on balance, we recommend that the Article be retained in its present form in the Applicant’s final draft DCO (subject to the considerations below regarding the East Coast Mainline (ECML) cable crossing).

Further Article 22 drafting in connection with ECML cable crossing options

- 7.4.29. Paragraphs 6.5.20 to 6.5.41 of the Compulsory Acquisition chapter set out our consideration of the proposed cable crossing options of the ECML. For brevity these are not repeated in detail here. This was an issue that was taken forward but not finalised during the Examination due to ongoing discussions between the Applicant and Network Rail Infrastructure Limited (NR).
- 7.4.30. In its Closing Submissions [[REP10-013](#)], the Applicant states that notwithstanding the agreement of Protective Provisions and a Framework Agreement, NR would still require various approvals, sign-offs and clearances, before the Applicant can commit solely to the cable being routed through the culvert under the ECML. It explains that this would form part of the detailed design and would not be known until the post-DCO consent stage, until such time the Applicant says it needs to retain the flexibility of two options (the other being via the existing A6121 road bridge in Essendine).

- 7.4.31. However, the Applicant goes onto explain that soon after the Examination it expects to have agreed with NR an Option for Easement, as well as PPAs and Framework Agreement on the use of the existing culvert under the ECML. It has committed to updating the Secretary of State when this has happened. The Applicant has also provided, at Deadline 8, suggested without prejudice drafting to Article 22 (in response to Q4.0.2 of the ExA's Questions and/or commentary on the draft DCO [[REP8-020](#)]) should the necessary agreement be reached with NR. This would ensure that only one of the two options is pursued rather a combination of both, notwithstanding the Applicant's preference for the culvert option.
- 7.4.32. This drafting is intended to be inserted into Article 22 (Compulsory acquisition of rights) as a new Article 22 (3) and (4):
- (3) The undertaker may only exercise the power conferred by paragraph (2) for one of the following two options in respect of the carrying out of Work No. 4 to cross the East Coast Mainline railway line-*
- (a) the land comprising plots 02-51b, 02-52b and 02-54 to 02-147 as shown on the land plans; or*
- (b) the land comprising plots 02-139, 02-140, 02-149, 02-151 and 04-22 as shown on the land plans.*
- (4) Where the undertaker serves notice to treat under section 5 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either sub-paragraph 3(a) or subparagraph 3(b), it must at the same time serve on the owners of the land of the other option, a notice specifying that powers under this article cannot be exercised over that land under this Order.*
- 7.4.33. As noted above, this would ensure that when one option is chosen, the compulsory acquisition powers cannot be used for the other option. What it would not do however, is direct that the Applicant uses only the ECML culvert option (which is the most preferable in terms of minimising disturbance from cable construction works along the A6121 through Essendine) as opposed to the Essendine bridge option. Either one or the other option could potentially still be implemented even with the Applicant's suggested drafting, in spite of the Applicant's position that the ECML culvert is its (and Network Rail's) most preferable option, subject to Network Rail agreement and approvals.
- 7.4.34. Whilst acknowledging that the final detailed sign-offs etc would not be known until the post-DCO consent stage, it appears possible that sufficient certainty may be able to be reached following the agreement of an Option for Easement, along with the Framework Agreement and the agreed Protective Provisions. Whilst further detailed work is to be progressed on this matter with NR, there appears to be no known impediment at this stage that would lead to the culvert option not being able to be implemented.
- 7.4.35. Whilst the ECML culvert option is preferable to avoid disturbance that would result from the A6121 Essendine option, the Applicant still requires the flexibility of two options, so that if NR does not agree to an aspect of

the detailed design for the use of the culvert/archway, then the Applicant can still use the Essendine option. We consider that the Applicant has introduced measures to reasonably minimise effects on APs and others. We also consider that, given the current position on discussions between the Applicant and NR, it is reasonable for both options to remain within the DCO.

7.4.36. It may therefore be necessary to insert the Applicant's suggested additional drafting into Article 22 based on its update to the SoS.

7.4.37. Furthermore, with ongoing discussions between the Applicant and NR following the Examination, it is possible that matters may have progressed to such an extent that the Proposed Development may be able to be restricted to solely the ECML culvert option (with the removal of the Essendine A6121 option). However, if this was to be the case, further DCO drafting would be required.

Article 27 (Modification of Part 1 of the Compulsory Acquisition Act 1965)

7.4.38. We consider separately the suggestion made by Town Legal LLP on behalf of Mr Richard Williams (an Affected Person) at Deadline7 [\[REP7-062\]](#) that the Crichel Down rules should be applicable to the undertaker in this case. For the reasons set out in section 6.5 of this report we do not agree that this is necessary and so do not agree to the suggested additional drafting to Article 27 as proposed by Mr Williams.

Article 29 (Temporary use of land for constructing the authorised development)

7.4.39. Article 29(3) makes provision for not less than 14 days notice before entering on or taking possession of land under this article. The Applicant, in its response to our ExQ2 5.0.7 [\[REP5-012\]](#) considers this to be sufficient and appropriate, ensuring that the construction programme would not be threatened, which might occur should three months be required as envisaged by Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017. It goes on to say that it may lead to land needing to be temporarily possessed earlier than would otherwise be the case on a precautionary basis. It also draws attention to the now repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 which includes a 14-day period. Further, in its response to ExA Q4.0.4 of our DCO Questions and Commentary [\[REP8-020\]](#), the Applicant draws attention to the proposed connection date of 2028 and so highlights that time is of the essence.

7.4.40. We recommended in this case that the notice period in Article 29(3) is extended from 14 days to not less than 28 days. This is appropriate given the potential uncertainties for owners/occupiers at this stage as to which land will be required for temporary possession during construction. Furthermore, with appropriate forward planning, it appears unlikely to us that a 28-day period should cause any significant issue for the construction programme. We consider it would provide for an appropriate balance between the needs of the project, fairness for owners/occupiers

of land and the longer three-month period set out and envisaged under the Neighbourhood Planning Act. It would also be consistent with the relevant time period in the Longfield Solar Farm Order 2023.

Schedule 1 (Authorised development)

- 7.4.41. The final paragraph of Schedule 1 (below the list (a) to (n)) generally covers 'any further associated development'. The list (a) to (n) is a long and wide-ranging list, as might be expected at the Application stage given the knowledge the Applicant would have of the works and operations that are likely to be necessary to implement the Proposed Development. The Applicant considers that the additional final paragraph is needed for a scenario where at detailed design, the Applicant realises that there is something that is required in order to develop the project but it is something that had not been thought of before and could not be known at this stage in the design [[REP7-037](#)].
- 7.4.42. We consider that the introductory paragraph before the list (a) to (n) could be expanded to comprise 'other such works or operations as may be necessary or expedient...' without needing the final paragraph. As the introductory paragraph to the list ends by saying 'including' this does not, contrary to the Applicant's view [Q5.0.1 of [REP8-020](#)] make it a closed list and so does not exclude other works or operations not covered in the list. We therefore recommend that Schedule 1 is amended by amending the introductory paragraph to the list (a) to (n) and then deleting the final paragraph which becomes superfluous as set out in Table 3 below.

Schedule 2 (Requirements)

General

- 7.4.43. LCC would prefer to be named as a 'relevant planning authority' in Requirements 7 (Landscape and ecology management plan), 8 (fencing and other means of enclosure), 11 (Construction environmental management plan), 12 (Operational environmental management plan) and 18 (Decommissioning and restoration) [[REP9-020](#)]. However, we consider it reasonable and appropriate for these Requirements to include provision for consultation with LCC and for the local authorities of either/both SKDC and RCC to be responsible for approval of the relevant matters as the local planning authorities. We do not therefore recommend any changes to these Requirements in this respect.

Requirement 5 (Approved details and amendments to them)

- 7.4.44. We questioned (ExQ1 5.2.2) the part of this Requirement that would allow certified documents (other than the Book of Reference and Land Plans) to be subject to the approval of amendments by the relevant planning authority (in addition to matters approved under separate Requirements such as detailed management plans). This would allow elements of the Proposed Development to change subject to the matter being unlikely to give rise to any materially new or materially different environmental effects.

- 7.4.45. In questioning this matter we were conscious of the separate provisions, [Guidance](#) and advice for amendments to approved DCOs including the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) and paragraphs 17.2 to 17.6 of Advice Note Fifteen: Drafting Development Consent Orders which advises that it is not acceptable to circumvent the prescribed process in Schedule 6 of the PA2008 by seeking to provide another route to approving such changes or variations, by a person other than the SoS who made the DCO.
- 7.4.46. The Applicant's drafting for Requirement 5 would go beyond these expectations and would in effect circumvent the general procedures in place for making amendments to an approved DCO scheme.
- 7.4.47. The Applicant's response to ExQ1 5.2.2 explained that exact design details cannot be confirmed at this time and that it would allow flexibility to accommodate changes in technological advancements and the ability to amend approved documents if necessary.
- 7.4.48. This matter was also discussed at ISH3. The Applicant [[REP4-040](#)] further explained that it would not allow major changes as it requires a demonstration to the satisfaction of the relevant planning authority that the subject matter would be unlikely to give rise to materially new or materially different environmental effects from those assessed in the ES. It says it would empower the planning authority to allow non-material amendments to documents approved within the DCO in the first instance. For other changes, the Applicant would need to go through the statutory process.
- 7.4.49. The Applicant also subsequently explained (in its answer to ExQ2 5.2.2 [[REP5-012](#)]) that it offers flexibility to capture new or amended mitigation measures in final documents based on the final approved design and that to remove the ability to do so would undoubtedly cause delays to the construction process if such applications needed to be submitted to the SoS.
- 7.4.50. RCC [[REP5-024](#)] considers this Requirement to be generally satisfactory subject to time periods for consideration of submissions being as those for consideration of other Requirements (which they would be). SKDC raised no specific objection to Requirement 5.
- 7.4.51. Nevertheless, we remain concerned at the scope of Requirement 5 in allowing for certified documents (other than the Book of Reference and Land Plans) to be the subject of amendments, albeit subject to local authority approval. This might include the ES itself which, despite the test on environmental effects, could lead to changes that have a bearing on matters of importance and concern for local residents and others. There may also be ambiguity in terms of practical interpretation of the phrase 'unlikely to give rise to any materially new or materially different environmental effects from those assessed in the ES'.

- 7.4.52. Whilst the Applicant states that it may allow for further mitigation to be provided, given that the relevant management plans are currently outline, there is ample scope and flexibility for the detailed versions to incorporate the necessary detailed mitigation. Moreover, the principle and general form of mitigation required, is a matter than needs to be resolved as part of the applicant, rather than at a later time.
- 7.4.53. We also acknowledge and give weight to the MPAG's concerns (paragraph 23.4 of [REP10-024](#)) in this regard that given the extensive use of the Rochdale Envelope there is potential for change without further consultation and that it would put an inordinate amount of pressure on local councils to consider changes. Whilst we also note that no objections to the drafting have been raised by RCC or SKDC, we are concerned that unreasonable burdens could be placed on the local authorities. As noted above, there are already Regulations and procedures in place to deal with amendments to made DCO's.
- 7.4.54. We are aware of recent precedents for the Applicant's drafting (including the Longfield Solar Farm Order 2023). Nevertheless, for the reasons set out above, we do not consider the part of this Requirement relating to the amendment of certified documents to be necessary or reasonable in this case.
- 7.4.55. In conclusion, we therefore recommend that Requirement 5 is amended, as set out in Table 3 below, so that it only applies to amendments to any documents, plans, details or schemes which have been approved pursuant to any requirement, and not to documents certified under Article 38.
- 7.4.56. This also includes the removal of the reference to the percentage of biodiversity net gain units (BNG) referred to in Requirement 7(2)(f), as any such amendment would also need to be subject to the standard amendment process if necessary. We also note in this respect that the Applicant's BNG target in Requirement 7(2)(f) has been set lower than could actually be achieved bearing in mind that BNG metric could be subject of future change.

Requirement 6 (Detailed design approval)

- 7.4.57. We asked whether this Requirement should specifically include the approval of 'electrical cables' as well as 'power' and 'communication' cables. 'Electrical cables' are defined in Article 2 (Interpretation) of the draft DCO [[REP9-005](#)]. Outline details of the proposed electrical cables are set out in section 5.7 (Project Description) of the ES [[REP2-012](#)].
- 7.4.58. The Applicant responded [Q6.0.2 of [REP8-020](#)] that such wording has not been included in the other solar DCOs and there are already controls in the relevant outline management plans. Whilst constructional methodology for underground cabling would be required by paragraph 2.2.2 of the outline CEMP [[REP8-009](#)] this does not specifically refer to the routing of cables. In our view, it would be inconsistent for Requirement 6 to include details of 'power' and 'communication' cables

but not 'electrical cables'. Indeed, there appears to be potential for confusion between whether 'power' cables are the same or not as 'electrical' cables. We consider that it would also be helpful to the relevant local authorities and other parties to see the locations of cables in submitted details so a full assessment can be made, particularly given the flexibility that is currently sought by the Applicant at this stage for such details. In view of these circumstances, we therefore recommend that Requirement 6 (1) (f) is amended to include reference to 'electrical cables'.

- 7.4.59. Representations were made, including from RCC [[REP2-048](#)] that if panels become more efficient, the DCO should require the Applicant to review and reduce the solar area accordingly to ensure land take and landscape and visual impacts are minimised. We are satisfied that, both Requirements 6 and 7 (Landscape and ecology management plan) will enable the final detailed design of matters such as solar PV array and landscape areas to be submitted for approval based on the panel information available at that time.

Requirement 7 (Landscape and ecology management plan)

Maintenance

- 7.4.60. This Requirement includes a provision for the replacement, as necessary, of any new hedgerow, shrub or tree, for a period of 5 years after planting. Concerns have been raised, including from SKDC, that landscape mitigation should be delivered over a minimum period of 15 years linked with concerns raised regarding the effects of acute climate conditions on landscaping.
- 7.4.61. In our view, the initial five-year period is clearly important to ensure that new planting is properly established and maintained in its infancy. The outline Landscape Environmental Management Plan (LEMP) [[REP7-021](#)] sets out what we consider to be acceptable principles for the ongoing management of landscaping, including a framework for the management and maintenance during operational period of the Proposed Development, including additional planting and/or replacement planting for planting that has failed to establish (paragraph 6.2.3 of the outline LEMP).
- 7.4.62. The detailed LEMPs would require the subsequent approval of the relevant local authorities and it would be important that these contain the necessary specific detail of landscape management and maintenance to ensure that new landscaping is appropriately maintained through the operational life of the scheme. The local authorities would also be able to ensure that the final details of landscaping and planting are suitably robust and take account of any risk from climatic conditions. We are satisfied that there are sufficient and practical mechanisms in place though the draft DCO for them to do so.

Scope of matters for approval

- 7.4.63. The outline LEMP was updated during the Examination to include a 'Grassland Establishment Management Plan (GEMP) – Solar PV Site Area' as Appendix 3. Earlier in paragraph 3.7.63 of our report we raise concern that Requirement 7 does not explicitly make reference to the GEMP or the establishment of grassland more generally. For clarity and precision, we therefore recommend that this requirement is amended to include reference to the GEMP and grassland establishment.
- 7.4.64. We also recommend that Requirement 7 (2) (a) include 'shrub' planting as well as 'tree and hedgerow' planting for the avoidance of doubt as to whether this should be included for approval and to be consistent with the wording in Requirement 7 (3) which states "Any hedgerow, shrub or tree planted as part of the approved plan.....".

Requirement 10 (Archaeology)

- 7.4.65. Following the submission of the Applicant's outline WSI, this Requirement was amended to require that the Proposed Development is carried out in accordance with the outline WSI which includes provision for further archaeological evaluation and mitigation. As set out in detail in Section 3.5 we prefer the Applicant's 'without prejudice' version of this Requirement which will provide an opportunity for further trial trenching to take place, including in areas of the proposed solar PV arrays, to reduce the risk of harm to below ground archaeological assets.
- 7.4.66. The detail of our recommended Requirement is set out in Table 3 below. This includes the need for an updated outline WSI to be approved including the additional trial trenching evaluation details.
- 7.4.67. Turning to the mechanism of approval of the outline WSI under this revised requirement, the Applicant states [response to EXQ2 6.0.5 of [REP8-020](#)] that determination by the SoS (rather than the relevant planning authority) is critical in this instance because it is already known that the planning authorities and the Applicant fundamentally disagree about the issue of trial trenching and that this is very unlikely to change. As such, the Applicant says it would be inefficient for both sides to knowingly go through the 10-week determination process and so inevitably lead to a refusal, when the matter can be determined more quickly and efficiently by going straight to the SoS.
- 7.4.68. We note that such a mechanism would be inconsistent with that of the other Requirement approvals. We envisage that the Applicant would wish to discuss a potential submission with LCC and RCC in advance of a formal submission in order to seek to reach a reasonable agreement. If a formal submission does end up being refused, then the general appeal mechanism would be available as with the other Requirements. Whilst noting the current disagreement between the parties, we do not agree that this provides sufficient grounds for requiring a bespoke requirement for approval by the SoS. We have reflected this in the drafting of Requirement 10 in our rDCO in Appendix D.

7.4.69. As set out in Section 3.5 of this report, we are satisfied that with our recommended drafting of Requirement 10 in place, the Proposed Development would provide a reasonable and proportionate response to below ground archaeology.

Requirement 12 (Operational environmental management plan (OEMP))

7.4.70. We recommend the addition of wording requiring that the OEMP must include details of road routes to and from the site for any heavy goods vehicles (HGV) requiring during operation. We acknowledge there would be separate controls to ensure that effects during operation do not result in materially new or different environmental effects and there would be a limit of no more than five two-way HGV movements per day. However, given the potential for panel replacement discussed elsewhere (which could result in daily HGV movements over a period of time) and the constraints of some local roads, we consider it necessary to ensure that HGV routing is controlled to minimise any effects from HGV movements during operation.

Requirement 18 (Decommissioning and restoration)

7.4.71. This requirement was considerably revised during the Examination in response to representations from IPs and our questions, including the Applicant's addition of a 60-year operational time period. We consider the issue of the operational period of the Proposed Development separately in Section 3.1 of our report.

7.4.72. We recommend an amendment to the wording of 18(1) to ensure compliance with paragraph 3.10.138 of 2023 draft EN-3 which states that where consent is time limited, the DCO should impose a requirement setting the time-limit from the date the solar farm starts to generate electricity. The Applicant's drafting in Requirement 18(1) refers to the date of final commissioning of Work No.1 that is subject to the last notice given by the undertaker pursuant to the phasing details and so would not accord with paragraph 3.10.138.

7.4.73. MPAG [[REP2-090](#)] and others have raised concerns in relation to the decommissioning timeline, its enforceability and availability of funding. The Requirement includes the need for approval of a detailed Decommissioning Environmental Management Plan (DEMP) [[REP10-008](#)]. This includes a decommissioning programme, compliance with which would be enforceable under the DCO. We do not consider it necessary for any further controls to be imposed on the timeframe for the decommissioning programme. Nor do we agree with Mr Richard Williams [[REP4-066](#)] that it would be necessary to make provision to increase the level of a potential fine within the DCO. Whilst there were suggestions by Interested Parties for provision to be made for a financial bond, consistent with the other made DCO's for solar projects we do not consider this to be necessary given the controls that would already be in place via Requirement 18 of the DCO.

7.4.74. The outline DEMP also notes that all the solar infrastructure, including PV modules, onsite substation, mounting structures, cabling on or near the surface (excluding cables in highways), would be removed.

7.4.75. We therefore recommend only the change to Requirement 18(1) as set out above.

Requirement 19 (Long-term flood risk mitigation)

7.4.76. Further to our considerations and reasoning set out in Section 3.11 of this report, we consider it necessary to add the Applicant's previously drafted Requirement 19 that was added to the draft DCO at Deadline 6 [[REP7-009](#)] but subsequently removed. This is to ensure that appropriate provision is made for any climate change allowances in the context of the proposed 60-year operational time period. In the event that the SoS considers a shorter operational time period of 40-years to be appropriate, then Requirement 19 would not be necessary.

Schedule 13 (Documents and plans to be certified)

7.4.77. This requires updating as set out in the Applicant's deadline 10 covering letter [[REP10-001](#)] to reflect updated documents submitted at that deadline. These documents being the Book of Reference, the outline DEMP and the outline OEMP.

Schedule 15 (Protective Provisions)

7.4.78. By the end of the Examination, all the Protective Provisions in Schedule 15 of the draft DCO have been agreed with the relevant parties. We are satisfied that there are no outstanding matters to consider further as part of the Protective Provisions. We discuss matters relating to Statutory Undertakers in Chapter 6.6.

Schedule 16 (Procedure for discharge of requirements)

Time period of determination

7.4.79. LCC, SKDC and RCC consider that a general ten-week determination period is appropriate for all approvals under the requirements rather than the Applicant's approach of a ten week determination period for submissions pursuant to Requirements 6, 7, 8, 9, 11, 12 and 18 and eight weeks for the remainder. The Applicant argues [[Q8.0.1 REP8-020](#)] that an additional two weeks delay for the other Requirements, multiplied across multiple requirement and set in the context of a project seeking to be implemented in time to meet a connection date would be inappropriate. It says that every week is critical and in the event of an approval being refused it would lead to a longer delay through the appeal process, which would impact on the ability to deliver the project.

7.4.80. We recognise the need to avoid undue delays in implementation. Nevertheless, we consider there to be benefits in there being a consistent and clear ten-week determination period for applications pursuant to all Requirements. We have taking account of the need for consultation with

relevant parties (noting that the relevant authorities may decide to consult not just in those cases where this is a provision of the Requirement), the level of detail that would need to be considered and the resource implications for the local authorities. With appropriate forward planning, we do not consider that a consistent 10-week determination period would place an unreasonable burden on the Applicant. We therefore recommend that Schedule 16 is amended to provide a ten-week determination period for all applications made under the Requirements. Accordingly, our rDCO contains amendments to para 2 of Schedule 16 as set out in Table 3 below.

Time period for appeals

7.4.81. The original draft DCO submitted with the application did not include a time limited period for the submission of an appeal by the Undertaker. During the Examination we suggested a 42-day period, to which the Applicant responded suggesting six months in order to provide appropriate arrangements for making any appeal and that this would be consistent with the period in article 37 of the Town and Country Planning Development Management Procedure) (England) Order 2015 to submit an appeal following refusal of a submission pursuant to a condition.

7.4.82. We note that a 42-day period for the making of an appeal is suggested within the standard drafting in Appendix 1 of Advice Note Fifteen: Drafting Development Consent Orders. We do not consider that satisfactory justification has been provided to depart from this standard drafting for National Infrastructure, and most particularly it appears to us that 42 days should provide sufficient time for the Applicant to prepare any appeal submission. This would also accord with the Applicant's other submissions on the need to progress with haste in order to meet the agreed connection date.

7.4.83. We therefore recommend that the period for making an appeal under Schedule 16 (4) (2) (a) is reduced from six months to 42 days.

Time period for an appointed person to determine an appeal/to request further information

7.4.84. Section 4(2)(f) provides that an appointed person (by the SoS) must make their decision on an appeal and notify it to the appeal parties as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions.

7.4.85. We do not consider it appropriate for a DCO to fetter the decision-making time period for a person appointed by the SoS to determine an appeal. We therefore recommend that this 30-day period wording is deleted, noting that it would be incumbent in any case on such appointed person to make a decision as soon as reasonably practicable. In a similar vein, we do not consider it appropriate to set a time period for an appointed person to request further information in section 4(3). We therefore recommend that both those time periods are deleted.

Fees

- 7.4.86. During the Examination, following representations from the local authorities, the Applicant expanded Schedule 16 (Procedure for discharge of requirements) to include a new section on fees.
- 7.4.87. SKDC have confirmed they agree with the Applicant's approach to fees in Schedule 16 subject to any changes brought about by the 2023 Fee Regulations. RCC does not consider that the fees would be sufficient to cover the cost of the work involved under the Requirements. It says it would expect fees similar to the reserved matters planning application rates given the significant amount of work and consultation involved. As a minimum it would expect the fees to be in accordance with the fees set out in the recently published Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023.
- 7.4.88. At Deadline 9 the Applicant [[REP9-027](#)], in response to our Rule 17 requests, provided without prejudice drafting to cover fee uplifts and this was amended in its aforementioned Annex in view of the recently published 2023 Regulations. At Deadline 10 the Applicant submitted an Annex on its position regarding fees as part of its Closing Submissions [[REP10-013](#)]. It also noted the recent Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Amendment Regulations 2023 which were published prior to the end of the Examination and came into effect on 6 December 2023 (2023 Regulations). These introduce a new Section 18A into the 2012 Regulations to enable the fees in the Regulations to increase from 1 April 2025 (and annually thereafter) by the percentage increase in consumer price index or 10% whichever is the lowest.
- 7.4.89. As drafted in the Applicant's final DCO, the applicable fees would be:
- £2,028 for the first application for the discharge of requirements 6, 7, 8, 9, 11, 12 and 18;
 - £462 for each subsequent application for the discharge of each of the above requirements, and any application under Requirement 5 in respect of these requirements;
 - £116 for any application for the discharge of the other requirements, other applications under Requirement 5 or other approvals pursuant to any document referred to by or approved pursuant to any requirement.
- 7.4.90. Notwithstanding our views on the determination time period as set above (where a consistent approach to the determination period has merit), we consider the basis of the Applicant's fee proposal to be acceptable subject to the following amendments.
- 7.4.91. Firstly, that the fees proposed by the Applicant are amended as follows in line with the suggestions of SKDC. Therefore, the fee amount of £2,028 above is increased to £2,535. £462 is increased to £578, and £116 is increased to £145. Notwithstanding the Applicant's view that its proposed fees are not equivalent to or the same as the fees set out on the Fees

Regulations, we consider that the above fees generally align with those in the recent 2023 Regulations. These being respectively the fees for i) 'other operations', 'approval of reserved matters' (if full fee already paid) and discharge of conditions for all other permissions. We also consider it appropriate to apply the level of increases that would be brought about under these Regulations, especially when taking account of the resource implications that would be placed upon the local authorities in determining the relevant applications.

7.4.92. The 2023 Regulations also introduce an annual indexation of planning application fees, capped at 10% from 1 April 2025. We consider it appropriate and reasonable to also add this to the drafting of Schedule 16 in order to ensure that the fees payable to the local authorities rise with inflation. The Applicant has provided, without prejudice drafting in this regard which we have used for the proposed revised drafting in Table 3 below.

7.4.93. It appears that different approaches have been taken to the payment of fees for the discharge of requirements in other made DCO's including those made to date for solar schemes. We consider that the approach we recommend here to be fair and reasonable, taking account of the Government's general approach on planning fees set out in its 2023 Regulations.

Table 3: DCO Provisions recommended to be changed

Provision	ExA's proposed amendment
<p>Article 9 (3)</p> <p>Power to alter layout etc. of streets</p>	<p>Amend as follows:</p> <p>(3) '.....the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street <u>within the Order limits, including, notwithstanding article 3</u> (development consent etc. granted by this Order) any street outside of the Order limits and, without limitation on the scope of this paragraph, the undertaker may-'</p>
<p>Article 22</p> <p>Compulsory acquisition of rights</p>	<p>Note that a new 22 (3) and (4) may be required subject to any update from the Applicant, as set out in paragraphs 7.4.29 to 7.4.37 above.</p>
<p>Article 29(3)</p>	<p>Amend as follows:</p> <p>(3) Not less than 14<u>28</u> days before entering on and taking temporary possession of land under this article the undertaker must serve notice of</p>

Provision	ExA's proposed amendment
Temporary use of land for constructing the authorised development	the intended entry on the owners and occupiers of the land.
<p>Article 35 (6)</p> <p>Consent to transfer the benefit of the Order</p>	<p>As recorded in Table 1 above, the Applicant previously amended this drafting to increase the time period from 5 to 14 days but left in the word 'working' which is now superfluous.</p> <p>Amend as follows:</p> <p>6) The date specified under paragraph 5(6) must not be earlier than the expiry of fourteen (14) working days from the date of the receipt of the notification.</p>
<p>Schedule 1</p> <p>Authorised development</p>	<p>Amend the paragraph before the list (a) to (n) as follows:</p> <p>'In connection with and in addition to Work Nos. 1 to 7 further associated development within the Order limits <u>comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development</u> and insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement, including-'</p> <p>And, delete the whole of the final paragraph in Schedule 1.</p>
<p>Requirement 5</p> <p>Approved details and amendments to them</p>	<p>5.—(1) Subject to sub-paragraph (3), With respect to the documents certified under article 39 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement and the percentage of any biodiversity net gain units referred to in requirement 7(2)(f) (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority or both relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority or both relevant planning authorities</p>

Provision	ExA's proposed amendment
	<p>(as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.</p> <p>(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p> <p>(3) Sub-paragraph (1) does not apply to the book of reference and the land plans.</p>
<p>Schedule 2 Requirement 6</p> <p>Detailed design approval</p>	<p>Amend Requirement 6.(1) as follows:</p> <p>(f) drainage, water, <u>electrical</u>, power and communication cables and pipelines;</p>
<p>Requirement 7</p> <p><i>Landscape and ecology management plan</i></p>	<p>1) Amend 7 (2) (a) to refer to 'details of any proposed tree, and hedgerow <u>and shrub</u> planting.....'</p> <p>2) Add a new 7 (2) (b):</p> <p><u>(b) grassland planting establishment and maintenance (including any necessary updates to the Grassland Establishment Management Plan (Appendix 3 of the outline Landscape and Ecology Management Plan));</u></p>
<p>Requirement 10</p> <p>Archaeology</p>	<p>Replace the existing Requirement 10 with the following:</p> <p><u>1) The authorised development must not commence until:</u></p> <p><u>a) A scheme for additional trial trenching has been submitted to and approved by both relevant planning authorities, in consultation</u></p>

Provision	ExA's proposed amendment
	<p><u>with Lincolnshire County Council and Historic England;</u></p> <p><u>b) Additional trial trenching has been carried out in accordance with the scheme approved under sub-paragraph (a); and</u></p> <p><u>c) Updates are made to the outline written scheme of investigation to account for the results of the additional trial trenching carried out and the updated outline written scheme of investigation is submitted to and approved by both relevant planning authorities in consultation with Lincolnshire County Council and Historic England.</u></p> <p><u>2) The authorised development must be carried out in accordance with the updated outline written scheme of investigation approved under paragraph 1(c).</u></p>
<p>Requirement 12</p> <p>Operational environmental management plan</p>	<p>Add the following as a new 12(2):</p> <p><u>(2) The operational environmental management plan must include details of road routes to and from the site for any heavy goods vehicles required during operation.</u></p> <p>The existing 12(2) becomes 12(3).</p>
<p>Requirement 18</p> <p>Decommissioning and restoration</p>	<p>Amend Requirement 18(1) as follows:</p> <p>a) Decommissioning works must commence no later than 60-years following the date of the final commissioning of <u>the first phase of Work No. 1 to complete commissioning, as notified that is the subject of the last notice given</u> by the undertaker pursuant to requirement 3(4) (phasing of the authorised development and date of final commissioning)</p>
<p>Requirement 19</p> <p>Long-term flood risk management</p>	<p>Add the following as a new Requirement 19</p> <p>Long-term flood risk mitigation</p> <p><u>19.—(1) If any part of Work No.1 is still in operation on 1 January 2077, the undertaker must notify the relevant planning authority and</u></p>

Provision	ExA's proposed amendment
	<p><u>the Environment Agency whether it anticipates that the operation of Work No. 1 will continue after 31 January 2077.</u></p> <p><u>(2) If a notification under sub-paragraph (1) indicates that the undertaker anticipates that the operation of any part of Work No. 1 will continue after 31 January 2077, it must submit to the relevant planning authority (following consultation with the Environment Agency)—</u></p> <p><u>(a) an updated flood risk assessment of the flood risk arising from the continued operation of that part of Work No. 1 after 31 December 2077;</u></p> <p><u>(b) the details of any mitigation or compensation measures that the flood risk assessment under paragraph (a) recommends are necessary;</u></p> <p><u>(c) the implementation timetable, including identifying the need for (but not requiring a specific programme for the obtaining of) any consents, for any measures identified under paragraph (b); and</u></p> <p><u>(d) retention proposals for any measures identified under paragraph (b) for the remaining lifetime of the authorised development.</u></p> <p><u>unless otherwise agreed in writing by the relevant planning authority, in consultation with the Environment Agency.</u></p> <p><u>(3) The undertaker must implement the measures approved under sub-paragraph (2)(b) in accordance with the implementation timetable approved under sub-paragraph (2)(c) no later than 31 December 2077 or such other time period as is agreed with the relevant planning authority in consultation with the Environment Agency and must retain them for the lifetime of that part of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (2)(d).</u></p> <p><u>(4) The undertaker must not continue operation of Work No. 1 beyond 31 December 2077 unless the relevant planning authority has given its</u></p>

Provision	ExA's proposed amendment
	<p><u>approval following consultation with the Environment Agency under sub-paragraph (2) and the undertaker has complied with sub-paragraph (3) unless otherwise agreed in writing by the relevant planning authority, in consultation with the Environment Agency.</u></p>
<p>Schedule 13</p> <p>Documents and plans to be certified</p>	<p>Amend as follows to reflect Applicant's D10 submissions:</p> <p>book of reference – Revision number: <u>87</u> Date: <u>1610</u> November 2023</p> <p>outline decommissioning environmental management plan – Revision number: <u>65</u> Date: <u>16 November 25October</u> 2023</p> <p>outline operational environmental management plan – Revision number <u>76</u> Date: <u>16 November 25October</u> 2023</p>
<p>Schedule 16 (2)</p> <p>Procedure for discharge of requirements (Applications made under requirement)</p>	<p>Amend as follows:</p> <p>2.(1) Where Subject to sub-paragraph (2), where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight <u>ten</u> weeks beginning with the later of-.....</p> <p>Delete the whole of 2.(2) and renumber the subsequent paragraphs accordingly. Also, revise and/or delete references within the subsequent paragraphs to reflect the above changes.</p>
<p>Schedule 16 (4)</p> <p>Procedure for discharge of requirements (Appeals)</p>	<p>Amend section 4 as follows:</p> <p>4(1)(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(54);</p> <p>4(2)(a) any appeal by the undertaker must be made within six months <u>42 days</u> of the date of the notice of.....' (and delete 'or 2(2)')</p> <p>4(2)(f) the appointed person must make their decision and notify it to the appeal parties, with</p>

Provision	ExA's proposed amendment
	<p>reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e); and.....</p> <p>4(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, <u>as soon as reasonably practicable,</u> notify the appeal parties in writing specifying the further information required.</p>
<p>Schedule 16 (5)</p> <p>Procedure for discharge of requirements (Fees)</p>	<p>Alter the fees set out within the drafting 5(2) as follows:</p> <p>a) £2,028 <u>£2,535</u> b) £462 <u>£578</u> c) £116 <u>£145</u></p> <p>Insert a new paragraph 5(3) as follows:</p> <p><u>(3) Where an application under sub-paragraph (1) is made and a fee payable on or after 1 April 2025, then section 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Amendment Regulations 2023) will apply as modified by this Order, so that "the relevant amount" means the fee payable under this sub paragraph (2)(a), 2(b) or 2(c) above.</u></p> <p>The existing 5(3) subsequently is amended to 5(4).</p>

7.6. OTHER CONSENTS AND LICENCES

- 7.6.1. The Applicant has provided details [[APP-019](#)] of other consents and licences that are or might be required to construction and operation the Proposed Development.
- 7.6.2. Without prejudice to the exercise of discretion by other decision-makers there are no obvious impediments to the delivery of the Proposed Development arising from this consents and licences.

7.7. CONCLUSIONS ON DRAFT DCO

- 7.7.1. We have considered all the iterations of the draft DCO submitted by the Applicant and the representations of all parties during the Examination. We have noted the significant number of changes made during the Examination and we are in agreement with the majority of those changes, save for the matters included in Table 2 above. Further matters are also the subject of our recommendations as set out in Table 2 and are included in the recommended DCO in Appendix D of this report.
- 7.7.2. We consider the Requirements (as amended where required in our rDCO) to be necessary, reasonable, enforceable and sufficiently precise as well as being relevant to planning and the Proposed Development.
- 7.7.3. Taking all matters in this Chapter into account, and having regard to all matters relevant to the DCO raised in the remainder of this report, we conclude that, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This chapter summarises our conclusions arising from the report as a whole and sets out our primary recommendation to the Secretary of State (SoS).
- 8.1.2. Although the revised suite of National Policy Statements (NPS) were designated on 17 January 2024, the transitional provisions make clear that they have effect only for those applications for development consent accepted for examination after their designation. No designated NPS has effect in relation to the Proposed Development and therefore the Application falls to be determined under s105 of the Planning Act 2008 (PA2008).
- 8.1.3. We consider that 2011 EN-1 and 2011 EN-5 are both important and relevant to the SoS's decision. During the Examination it was also generally agreed by the parties, and we concur, that the March 2023 draft EN-1, EN-3 and EN-5 would be important and relevant. These were the draft NPS documents that were in place during our Examination. The parties have not had the opportunity to comment on the subsequently published energy NPSs and therefore our findings are based on those NPSs that were before the Examination. We consider the implications of the January 2024 energy NPSs below under matters for the benefit of the SoS.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. In coming to these conclusions, we have had regard to matters arising in the Local Impact Reports from Lincolnshire County Council (LCC), Rutland County Council (RCC) and South Kesteven District Council (SKDC). These include (but are not limited to) the recognition of the positive impacts of the production of renewable energy and biodiversity net gain, and adverse impacts on landscape character and visual amenity, loss of agricultural land (including best and most versatile) and food production, impacts on public right of way and other recreational users, residential amenity, disruption during construction, flooding from surface water, impacts on below ground archaeology and traffic disruption.
- 8.2.2. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, we are satisfied that the Proposed Development would not be likely to have significant effects on European sites and their features when considered alone or in combination with other plans or projects. We are satisfied that there is sufficient information before the SoS to enable them to conclude that an Appropriate Assessment is not required. We have taken these findings into account in reaching our recommendation.

- 8.2.3. With regard to designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), we have found that the Proposed Development would result in less than substantial harm to a designated heritage asset. However, this harm is outweighed by the substantial public benefit from the provision of low carbon energy to meet the need identified in 2011 EN-1 and draft 2023 EN-1 and by the other public benefits of the Application as summarised in Chapter 5. In all other respects, we have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. We have also had regard to the desirability of preserving or enhancing the character or appearance of conservation areas and the desirability of preserving a Scheduled Monument or its setting.
- 8.2.4. In terms of biodiversity and bearing in mind Regulation 7 of the Decisions Regulations, the ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of 2011 EN-1 and 2023 draft EN-1 and EN-3 are met. Furthermore, the ExA considers Biodiversity Net Gain arising from the Proposed Development would enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects. We have had regard to all other matters prescribed as required by s105(2)(b) of the PA2008.
- 8.2.5. 2011 EN-1 sets out the need and urgency for new energy infrastructure. This was carried forward into the draft 2023 NPSs, which now include solar within their scope recognising the contribution it can make to achieving Net Zero, providing security of supply and an affordable, reliable system. The Proposed Development would make an important contribution to meeting this need, helping in the transition to a low carbon system. The benefits in this regard carry substantial weight. Other benefits of lesser weight would also result as summarised in Chapter 5.
- 8.2.6. We find that the Proposed Development would result in several adverse effects, some of which have been assessed to be significant as set out in Chapters 3 and 5. However, we consider that these adverse effects have generally been minimised and mitigated, through mitigation measures secured through the recommended DCO. Following mitigation, we have found that significant adverse effects each attracting moderate weight against Proposed Development would be likely to result on landscape and visual amenity, Public Rights of Way users and wellbeing of residents living in proximity to the Order limits. Overall, we consider that the substantial benefits that would result from the Proposed Development, would outweigh those matters that weigh against the proposal.
- 8.2.7. We find that making the recommended draft DCO would be in broad alignment with 2011 EN-1, 2011 EN-5 along with the 2023 draft EN-1, 2023 draft EN-3 and 2023 draft EN-5. Furthermore, it would also be in alignment with the National Planning Policy Framework when considered as a whole. We have found that the Proposed Development would conflict with certain Development Plan policies, including those that require the

preservation of landscape character and visual amenity, the avoidance of harm to the use or enjoyment of green infrastructure, food production and agricultural economy, and the requirement for the support of the local community. However, given that the Proposed Development is a Nationally Significant Infrastructure Project, we attach greater weight to our findings in relation to the NPSs.

8.2.8. With regard to all other matters and representations received or heard, we are satisfied that there are no important and relevant matters that would individually or collectively lead to a different recommendation from that below.

8.2.9. In relation to the application for compulsory acquisition (CA) and temporary possession (TP) powers, we conclude:

- That the Proposed Development for which the land and rights are sought would be in accordance with national policy and would help meet a national need for additional electricity generating capacity;
- That all reasonable alternatives to CA have been explored, that the recommended DCO provides a clear mechanism to secure the necessary funding for CA and that there is a need to secure the land and rights required and to construct the Proposed Development within a reasonable timeframe;
- That the Proposed Development represents a significant public benefit, that the private loss to those affected is mitigated through the selection of the application land, the limitation to the minimum extent possible of the rights and interests proposed to be acquired, and the Protective Provisions included in Schedule 15 of the rDCO;
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 and meet the conditions set out in s127 and s138 of the PA 2008 as well as the CA Guidance; and
- That the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

8.2.10. We have had regard to the Public Sector Equality Duty (PSED) throughout the Examination, including the method by which hearings and site inspections were undertaken, and in producing this report. The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, we consider there is no breach of the PSED.

Specific matters considered in the Recommendation

Revised NPSs and NPPF

8.2.11. As noted above the revised 2024 EN-1, EN-3 and EN-5 were published by the Government on 17 January 2024 after the close of our Examination. Whilst the transitional provisions in 2024 EN-1 make clear they have effect only for those applications for development consent accepted for

examination after their designation, it states that they are potentially capable of being important and relevant considerations, the extent to which there are relevant is a matter for the SoS to consider.

- 8.2.12. The revised suite of Energy NPSs now identify a Critical National Priority (CNP) for nationally significant low carbon infrastructure. It introduces a policy presumption that, subject to any legal requirements, the urgent need for low carbon energy will generally outweigh any other residual impacts not capable of being addressed by the mitigation hierarchy.
- 8.2.13. The January 2024 versions of the NPSs, including CNP, would strengthen the case for low carbon Nationally Significant Infrastructure Projects. We have concluded that that the Proposed Development is clearly justified on the basis of the versions of the NPSs that were before us during the Examination and all other important and relevant matters, including relevant Government policy such as the British Energy Security Strategy. We do not consider there is anything contained within 2024 EN-1, EN-3 and EN-5 that would lead us to alter our overall conclusions on the Proposed Development. However, the SoS will need to consider whether the 2024 versions have any implications for their decision.
- 8.2.14. We also consider that there is nothing in the revised NPPF published on 20 December 2023 that would lead us to alter our overall conclusions on the Proposed Development.

Cable crossing of the East Coast Main Line (ECML)

- 8.2.15. Our considerations of this matter concerning the cable crossing options of the ECML are set out in paragraphs 6.5.20 to 6.5.41 of Chapter 6 (Compulsory acquisition) and paragraphs 7.4.29 to 7.4.37 of Chapter 7 (DCO). As previously set out, we are satisfied from the information before us at the time of our Recommendation, taking account of the proposed mitigation measures, that both options for the cable railway crossing route (through Essendine via the A6121 or through the culvert under the ECML) can reasonably be included in the DCO.
- 8.2.16. As discussions are ongoing, the Applicant has committed to updating the SoS on whether an Option for Easement has been agreed with Network Rail Infrastructure Ltd (NR) on the culvert option under the ECML. If so, the Applicant has provided additional drafting for Article 22 (Compulsory acquisition of rights) to be inserted as set out in paragraph 7.4.32 of our report, requiring that only one of the options is pursued rather than leaving the possibility of both options being implemented.
- 8.2.17. Furthermore, following the ongoing discussions between the Applicant and NR, it is possible that matters may have progressed to such an extent that the Proposed Development may be able to be restricted to solely the ECML culvert option (with the removal of the Essendine A6121 option). If this was to be the case, further DCO drafting would be required.

Side agreements with highway authorities

- 8.2.18. Further to paragraphs 3.10.58 to 3.10.60 of our report, the SoS will note that the Applicant has confirmed in its Closing Summary Statement that it intends on completing the side agreements with RCC and LCC in time to update the SoS that this has occurred prior to a decision being taken on the application. Notwithstanding this, we are satisfied that the relevant draft DCO Articles (9, 10 and 13) are in an acceptable form.

8.3. RECOMMENDATION

- 8.3.1. For all the above reasons, and having regard to the LIRs produced by LCC, RCC and SKDC as well as our findings and conclusions on important and relevant matters set out in this report, we conclude that the case for the development has been made and recommends that the SoS makes the Mallard Pass Solar Farm Order in the form set out in Appendix D to this report.

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APPENDIX A: RELEVANT POLICIES AND LEGISLATION

Table A1 – Summary of relevant legislation

Legislation
<ul style="list-style-type: none">▪ Air Quality (England) Regulations (2010) The Air Quality Standards Regulations 2010 give statutory effect to the Air Quality Directive (AQD) and transposes it into UK law. It requires the SoS, as the competent authority, to assess ambient air quality. It sets limit values (LVs) for compliance and establishes control actions where the LVs are exceeded.▪ Climate Change Act 2008 (as amended) The Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 establishes the legally binding framework to tackle climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets greenhouse gas emission reductions in the UK of at least 100% by 2050.▪ Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Habitats Regulations give effect to the Habitats Directive (92/43/EEC) and Wild Birds Directive (2009/147/EC). Following the UK's departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively.▪ Control of Pollution Act 1974 Section 60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration.▪ Countryside and Rights of Way Act 2000 The Act (as amended) includes provisions regarding PRoW and access to land.▪ Environment Act 2021 The Environment Act 2021 provides targets, plans and policies for improving the natural environment. Schedule 15 makes provision for Biodiversity Net Gain in NSIPs. Whilst not yet in force, it contains a future target for 10% net gain.• Environmental Protection Act 1990 Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance.▪ Equality Act 2010 The Equality Act 2010 establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

Legislation

- **Human Rights Act 1998**

The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998.

- **Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

The Proposed Development falls within Schedule 2 Part 3 (a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) as an industrial installation for the production of electricity.

- **Natural Environment and Rural Communities Act 2006**

The Natural Environment and Rural Communities Act 2006 makes provisions for bodies concerned with the natural environment and rural communities. It includes a duty that public bodies must have regard to the conservation of biodiversity in exercising functions insofar as is consistent with the proper exercising of those functions.

- **Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

The WFD Regulations give effect to the Water Framework Directive which establishes a framework for water policy and water quality. The WFD Regulations seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems.

- **Wildlife and Countryside Act 1981 (as amended)**

The Wildlife and Countryside Act 1981 (as amended) is the primary legislation that protects animals, plants and certain habitats. It provides for the notification and confirmation of SSSIs. The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and PROW. If a species protected under the Act is likely to be affected by development, a protected species licence will be required from Natural England.

Other relevant legislation

- Acquisition of Land Act 1981
- Ancient Monuments and Archaeological Areas Act 1979
- Anglian Water Authority Act 1977
- Arbitration Act 1996
- Bathing Water Regulations 2013
- Bourne and Essendine Railway Act 1857
- Burial Act 1857
- Carbon Budgets Order 2009 to 2021 (2021)
- Communications Act 2003
- Community Infrastructure Levy Regulations 2010
- Compulsory Purchase (Vesting Declarations) Act 1981
- Compulsory Purchase Act 1965
- Control of Major Accidents Hazard (COMAH) Regulations 2015

Legislation

- Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023
- Eastern Midlands Railway (Extensions) Act 1988
- Electricity Act 1989
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting Regulations 2010
- European Union (Withdrawal Agreement) Act 2020
- Forestry Act 1967
- Gas Act 1986
- Great Northern Railway (Junctions) Act 1865
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste Regulations (England and Wales) 2005 (as amended)
- Hedgerows Regulations 1997
- Highways Act 1980
- Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended)
- Infrastructure Planning (Decisions) Regulations 2010
- Land Compensation Act 1961
- Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Lincoln Waterworks Act 1846
- Modern Slavery Act 2015
- National Heritage Act 1983 (amended 2002)
- Neighbourhood Planning Act 2017
- New Roads and Street Works Act 1991
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning Act 2008
- Protection of Badgers Act 1992
- Railways Act 1993
- Road from James Deeping Stone Bridge through Stamford to Morcott Act 1806
- Road from James Deeping Stone Bridge to Stamford and to Morcott Act 1829
- Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011
- Road Traffic Regulation Act 1984
- The Air Quality Standards (Amendment) Regulations (2016)
- The Paris Agreement
- Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Amendment Regulations 2023)

Legislation

- Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Town and Country Planning Act 1990
- Traffic Signs Regulations and General Directions 2016
- Waste from Electrical and Electronic Equipment (WEEE) Regulations 2013
- Water Industry Act 1991
- Water Resources Act 1991
- Wild Mammals (Protection) Act 1996 (as amended)

Table A2 – List of development plan policies

Plan	Policies
Rutland Local Development Framework Core Strategy	<ul style="list-style-type: none"> ▪ Policy CS1 – Sustainable Development Principles ▪ Policy CS2 – Spatial Strategy ▪ Policy CS4 – Location of Development ▪ Policy CS6 – Re-use of Redundant Military bases and prisons ▪ Policy CS8 – Developer Contributions ▪ Policy CS15 – Tourism ▪ Policy CS16 – The Rural Economy ▪ Policy CS18 – Sustainable Transport and Accessibility ▪ Policy CS19 – Promoting Good Design ▪ Policy CS20 – Energy Efficiency and Low Carbon Energy Generation ▪ Policy CS21 – The Natural Environment ▪ Policy CS22 – The Historic and Cultural Environment ▪ Policy CS23 – Green Infrastructure, Open Space, Sport and Recreation
Rutland Local Plan Site Allocations Development Plan Document	<ul style="list-style-type: none"> ▪ Policy SP1 – Presumption in Favour of Sustainable Development ▪ Policy SP7 – Non-Residential Development in the Countryside ▪ Policy SP15 – Design and Amenity ▪ Policy SP18 – Wind Turbines and Low Carbon Energy Developments ▪ Policy SP19 – Biodiversity & Geodiversity Conservation ▪ Policy SP20 – The Historic Environment ▪ Policy SP23 – Landscape Character in the Countryside

Plan	Policies
Rutland Minerals Core Strategy and Development Policies Development Plan Document	<ul style="list-style-type: none"> ▪ Policy 10 – Development in Minerals Safeguarding Areas
Lincolnshire Minerals and Waste Local Plan: Core Strategy and Development Management Policies	<ul style="list-style-type: none"> ▪ Policy M11 – Safeguarding of Mineral Resources
South Kesteven Local Plan and Renewable Energy Appendix	<ul style="list-style-type: none"> ▪ Policy SD1 (The Principles of Sustainable Development in South Kesteven) ▪ Policy SP1 (Spatial Strategy) ▪ Policy SP5 (Development in the Open Countryside) ▪ Policy RE1 (Renewable Energy Generation) ▪ Policy EN1 (Landscape Character) ▪ Policy EN2 (Protecting Biodiversity and Geodiversity) ▪ Policy EN3 (Green Infrastructure) ▪ Policy EN4 (Pollution Control) ▪ Policy EN5 (Water Environment and Flood Risk Management) ▪ Policy EN6 (The Historic Environment) ▪ Policy ID2 (Transport and Strategic Transport Infrastructure) ▪ Policy DE1 (Promoting Good Quality Design) <p>Renewable Energy Appendix:</p> <ul style="list-style-type: none"> ▪ Criterion 1 Landscape and Visual Impact ▪ Criterion 2 Residential amenity assessment ▪ Criterion 3 of the Renewable Energy Appendix Cumulative Impact Assessment ▪ Criterion 4 Heritage assets ▪ Criterion 5 – Noise impact ▪ Criterion 6 Impact on highways ▪ Criterion 7 impact on Designated Sites ▪ Criterion 8 Glint and glare to aircraft movement

Plan	Policies
	<ul style="list-style-type: none"> ▪ Criterion 9 Agricultural land
Carlby Neighbourhood Plan	<ul style="list-style-type: none"> ▪ Policy P.0. Pollution Control ▪ Policy V.0. Village Rural Character and Appearance ▪ Policy D.0. Generic Development

Table A3 – Summary of other relevant national policies

Other relevant national policies
<p>National Planning Policy Framework (NPPF)</p> <p>The NPPF sets the Government’s planning policies for England in relation to decision making and plan making.</p> <p>The application was prepared and submitted in the context of the version of the NPPF published in July 2021. A revised NPPF was published during the Examination in September 2023 and subsequently, following the close of the Examination, a further version was published in December 2023.</p> <p>Paragraph 5 of the NPPF makes it clear that the document does not contain specific policies for NSIPs. However, the NPPF might be relevant to the consideration of NSIP applications.</p> <p>The NPPF is supported by the Planning Practice Guidance.</p>
<p>Noise Policy Statement for England (2010)</p> <p>The Noise Policy Statement for England identifies underlying principles and aims in existing policy documents, legislation and guidance that relate to noise.</p> <p>The statement sets the Government’s long-term vision for noise policy which is to <i>“promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development”</i></p>
<p>Written Ministerial Statement of the former SoS for Communities and Local Government (March 2015)</p> <p>The WMS included a statement on consideration for solar energy to protect the local and global environment. It identifies the Government’s ambitions for solar to play an important part of the UK’s energy mix. It also seeks to ensure that solar farms are developed in</p>

Other relevant national policies

the right locations to avoid the unnecessary use of high quality agricultural land.

A Green Future: Our 25 Year Plan to Improve the Environment (2018)

Published in January 2018, the Government's 25 Year Environment Plan sets out plans to improve the environment within generation. The plan's 10 goals are:

1. Clean air.
2. Clean and plentiful water.
3. Thriving plants and wildlife.
4. A reduced risk of harm from environmental hazards such as flooding and drought.
5. Using resources from nature more sustainably and efficiently.
6. Enhanced beauty, heritage and engagement with the natural environment.
7. Mitigating and adapting to climate change.
8. Minimising waste.
9. Managing exposure to chemicals.
10. Enhancing biosecurity.

Environmental Improvement Plan (2023)

Published in January 2023, the Environmental Improvement Plan is the first revision of the Government's 25 Year Environment Plan. It continues to use the 10 goals from the 25 Year Environment Plan as the basis for the document with an "apex goal" of thriving plants and wildlife.

Energy White Paper: Powering our Net Zero Future (2020)

Published in December 2020, the Government's Energy White Paper: Powering our Net Zero Future' (HM Government, 2020) builds on the Ten Point Plan and sets out the Government's policies and commitments which seek to achieve Net Zero and tackle climate change.

The White Paper states that "*A low-cost, net zero consistent system is likely to be composed predominantly of wind and solar. But ensuring the system is also reliable, means intermittent renewables need to be complemented by technologies which provide power, or reduce demand, when the wind is not blowing, or the sun does not shine.*"

National Infrastructure Strategy (2020)

Published in November 2020, the strategy sets out plans for UK infrastructure. One of its aims is to help the UK meet its net zero emissions targets by 2050. It states that to deliver net zero, the share of generation from renewables needs to dramatically increase with greater capacity from solar and other sources.

Other relevant national policies

Net Zero Strategy: Build Back Greener (2021)

Published by the Government in October 2021, the Strategy builds on commitments in the Energy White Paper (2020). Amongst its key policies is a commitment to achieve 40GW of offshore wind by 2030, with more onshore, solar, and other renewables.

The Net Zero Strategy was found to be unlawful by the High Court in its judgement on the case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin). Whilst the Net Zero Strategy was not quashed, a report that addresses the concerns identified within the strategy was required to be prepared and submitted, with compliance required by 31 March 2023 (refer to Powering up Britain (2023) below).

British Energy Security Strategy (2022)

Published in April 2023, the policy paper sets out how the UK Government is *"going to bring clean, affordable, secure power to the people for generations to come"* and *"build a British energy system that is much more self-sufficient."*

In relation to solar, it states that the Government will continue to support the effective use of land by encouraging large scale projects to locate on previously developed, or lower value land, where possible, and ensure projects are designed to avoid, mitigate, and where necessary, compensate for the impacts of using greenfield sites.

It also supports solar that is co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use.

Powering Up Britain (2023)

Published in March 2023, sets out the Government's plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government's Net Zero commitments. In relation to solar, it states:

"Solar has huge potential to help us decarbonise the power sector. We have ambitions for a fivefold increase in solar by 2035, up to 70GW, enough to power around 20 million homes. We need to maximise deployment of both ground and rooftop solar to achieve our overall target. Ground-mount solar is one of the cheapest forms of electricity generation and is readily deployable at scale. Government seeks large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low/medium grade agricultural land. The Government will therefore not be making changes to categories of

Other relevant national policies

agricultural land in ways that might constrain solar deployment. Government is seeking widespread deployment of rooftop solar in commercial, industrial and domestic properties across the UK. To support our solar ambitions, we are accepting the recommendation from the Independent Review of Net Zero to set up a taskforce to deliver on this ambition”

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APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation	Term
AA	Appropriate Assessment
AC	Alternating current
AEP	Annual Exceedance Probability
AIL	Abnormal indivisible load
ALC	Agricultural Land Classification
AP	Affected Person
AQMA	Air Quality Management Area
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BOAT	Byway Open to All Traffic
BoR	Book of Reference
BRE	Building Research Establishment
CA	Compulsory acquisition
CAH	Compulsory acquisition Hearing
CCC	Climate Change Committee
CCTV	Closed-circuit television
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
CPRE	Campaign for the Protection of Rural England
CTMP	Construction Traffic Environmental Management Plan
dB	Decibels
DC	Direct current
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DMP	Dust Management Plan
EA	Environment Agency
ECML	East Coast Main Line
EEA	European Economic Area
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMF	Electromagnetic fields
EPC	Essendine Parish Council
ES	Environmental Statement

Abbreviation	Term
ESSCP	Employment, Skills and Supply Chain Plan
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GEMP	Grassland Environmental Management Plan
GVA	Gross Value Added
GVLIA3	Guidelines on Landscape and Visual Impact Assessment
GW	Gigawatt
Ha	Hectare
HDD	Horizontal Directional Drilling
HPI	Habitat of Principal Importance
HRA	Habitats Regulation Assessment
IAPI	Initial Assessment of Principal Issues
IDB	Internal Drainage Board
IEMA	Institute of Environmental Management
IPC	Infrastructure Planning Commission
IPCC	Intergovernmental Panel on Climate Change
IPs	Interested Parties
ISH	Issue Specific Hearing
LCA	Landscape Character Area
LCC	Lincolnshire County Council
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LLP	Limited Liability Partnership
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
MAFF	Ministry of Agriculture, Fisheries and Food
MSA	Minerals Safeguarding Area
MW	Megawatts
MWh	Megawatt hour
MWp	Megawatt peak
NE	Natural England
NETS	National Electricity Transmission System
NGET	National Grid Electricity Transmission
NMU	Non-Motorised User
NO ₂	Nitrogen Dioxide

Abbreviation	Term
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing
PA 2008	Planning Act 2008
PM _{2.5}	Particulate Matter of 2.5 micro-meters or less in diameter
PM ₁₀	Particulate Matter of 10 micro-meters or less in diameter
PM	Preliminary Meeting
PPG	Planning Practice Guidance
PRoW	Public Rights of Way
RCC	Rutland County Council
RSPB	Royal Society for the Protection of Birds
RSuDS	Rural Sustainable Urban Drainage System
RVAA	Residential Visual Amenity Assessment
SAC	Special Area of Conservation
SFRA	Strategic Flood Risk Assessment
sHRA	Shadow Habitats Regulations Assessment
SKDC	South Kesteven District Council
SMP	Soil Management Plan
SMR	Strip, map and record
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Energy Security and Net
SPA	Special Protection Area
SPI	Species of Principal Importance
SPZ	Source Protection Zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SuDS	Sustainable Urban Drainage System
SWDS	Surface Water Drainage Strategy
TA	Transport Assessment
TP	Temporary possession
TPO	Tree Preservation Order
WFD	Water Framework Directive
WSI	Written Scheme of Investigation

Abbreviation	Term
ZTV	Zone of Theoretical Visibility
ZVI	Zone of Visual Influence

APPENDIX D: THE RECOMMENDED DCO

202* No. ****

INFRASTRUCTURE PLANNING

The Mallard Pass Solar Farm Order 202*

Made - - - - - ***

Coming into force - - - - - ***

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39. Certification of plans and documents, etc.
40. Arbitration
41. Protective Provisions
42. Service of notices
43. Procedure in relation to certain approvals etc.
44. Guarantees in respect of payment of compensation
45. Compulsory acquisition of land – incorporation of the mineral code

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS
SCHEDULE 3 — LEGISLATION TO BE DISAPPLIED
SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 5 — ALTERATION OF STREETS
 PART 1 — PERMANENT ALTERATION OF LAYOUT
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SCHEDULE 6 — PUBLIC RIGHTS OF WAY
 PART 1 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY
 STOPPED UP

- PART 2 — TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY
- SCHEDULE 7 — ACCESS TO WORKS
- SCHEDULE 8 — TRAFFIC REGULATION MEASURES
 - PART 1 — TEMPORARY SPEED LIMITS
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 - PART 3 — TEMPORARY TRAFFIC SIGNALS
- SCHEDULE 9 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
- SCHEDULE 10 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
- SCHEDULE 11 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 12 — HEDGEROWS TO BE REMOVED
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- SCHEDULE 14 — ARBITRATION RULES
- SCHEDULE 15 — PROTECTIVE PROVISIONS
 - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
 - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
 - PART 3 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
 - PART 4 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
 - PART 5 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY
 - PART 6 — FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED
 - PART 7 — FOR THE PROTECTION OF RAILWAY INTERESTS
 - PART 8 — FOR THE PROTECTION OF CADENT GAS LIMITED
- SCHEDULE 16 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b).

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules(c).

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(a) of the 2008 Act made a report and recommendation to the Secretary of State.

(a) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
 (b) S.I. 2009.2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.
 (c) S.I. 2010/103.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**(b)** and had regard to the documents and matters referred to in section 105(2)**(c)** of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114**(d)**, 115**(e)**, 120**(f)**, 122**(g)** and 123**(h)** of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Mallard Pass Solar Farm Order and comes into force on [X] 202*.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961**(i)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(j)**;

“the 1980 Act” means the Highways Act 1980**(k)**;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(l)**;

“the 1984 Act” means the Road Traffic Regulation Act 1984**(m)**;

“the 1989 Act” means the Electricity Act 1989**(n)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(o)**;

“the 1991 Act” means the New Roads and Street Works Act 1991**(p)**;

“the 2008 Act” means the Planning Act 2008**(q)**;

“access and rights of way plans” means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

(a) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(b) S.I. 2017/572.

(c) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.

(d) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.

(e) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).

(f) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.

(g) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.

(h) *Ibid.*

(i) 1961 c. 33.

(j) 1965 c. 56.

(k) 1980 c. 66.

(l) 1981 c. 66.

(m) 1984 c. 27.

(n) 1989 c. 29.

(o) 1990 c. 8.

(p) 1991 c. 22. Section 48 (3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(q) 2008 c. 29.

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“claimed public right of way” means the route of a public right of way that is claimed to exist by members of the public within the area shown on the claimed public right of way plan;

“claimed public right of way plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the claimed public right of way plan for the purposes of this Order;

“commence” means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act^(a) (which explains when development begins), comprised in, carried out, or for the purposes of, the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“date of final commissioning” means in respect of each phase of the authorised development as approved under requirement 3 of Schedule 2 (requirements) the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“design and access statement” means the document of that name identified in the table of Schedule 13 and which is certified by the Secretary of State as the design and access statement for the purposes of this Order;

“design guidance” means section 4.5 of the design and access statement;

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables, data cables and optical fibre cables; and
- (b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document of that name identified in the table in Schedule 13 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

(a) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 c. 34.

“hedgerows plans” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the hedgerows plans for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act^(a);

“holding company” has the same meaning as in section 1159 of the Companies Act 2006^(b);

“land plans” means the plans of that name identified in the table in Schedule 13 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of the authorised development (but not remove, reconstruct or replace the whole of Work No. 1 at the same time), to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement for the operation of the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land plans, which is described in the book of reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans may be carried out;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning environmental management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline employment, skills and supply chain plan” means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline employment, skills and supply chain plan for the purposes of this Order;

“outline excavated materials management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline excavated materials management plan for the purposes of this Order;

“outline landscape and ecology management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

“outline operational environmental management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

“outline soil management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“outline surface water drainage strategy” means the document of that name contained in Appendix 11.6 of the environmental statement identified in table at Schedule 13 which is certified by the Secretary of State as the outline surface water drainage strategy for the purposes of this Order;

(a) “highway” is defined in section 328(1). For “highway authority” see section 1.

(b) 2006 c. 46.

“outline travel plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline travel plan for the purposes of this Order;

“outline water management plan” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline water management plan for the purposes of this Order;

“outline written scheme of investigation” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“parameters” means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as parameters for the purposes of this Order;

“permissive paths” means new paths providing restricted public access within the Order limits along the routes shown on the outline landscape and ecology management plan;

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;
- (b) removal of plant and machinery;
- (c) above ground site preparation for temporary facilities for the use of contractors;
- (d) remedial work in respect of any contamination or other adverse ground conditions;
- (e) diversion and laying of apparatus;
- (f) the provision of temporary means of enclosure and site security for construction;
- (g) the temporary display of site notices or advertisements; or
- (h) site clearance (including vegetation removal, demolition of existing buildings and structures);

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

“relevant planning authority” means the local planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) and “requirement” means any one of the requirements;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(b);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(c);

“street works” means the works listed in article 8(1) (street works);

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(d);

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act(a);

(a) 1981 c. 67.

(b) 2003 c. 21.

(c) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

(d) 2006 c. 46.

“traffic regulation measures plans – road closures” means the plans of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the traffic regulation measures plans – road closures for the purposes of this Order;

“traffic regulation measures plans – temporary measures” means the plans of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the traffic regulation measures plans – temporary measures for the purposes of this Order;

“undertaker” means Mallard Pass Solar Farm Limited (company number 12575861);

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“working day” means any day apart from Saturday, Sunday or any statutory bank or public holiday; and

“works plans” means the plans of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) In this Order, references to the purposes of the authorised development includes the construction, maintenance, operation, use and decommissioning of the authorised development.

(4) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans, access and rights of way plans, traffic regulation measures plans – road closures and traffic regulation measures plans – temporary measures are to be taken to be measured along that work.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by number.

(6) In this Order, the expression “includes” is to be construed without limitation.

(7) In this Order, references to any statutory body include that body’s successor bodies.

(8) All areas described in square metres in the book of reference are approximate.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(a) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; S.I. 1999/1920 and S.I. 2001/1400.

Operation of generating station

4.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Power to maintain authorised development

5.—(1) The undertaker may at any time maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

(3) This article does not authorise the carrying out of any works which give rise to any materially new or materially different effects that have not been assessed in the environmental statement for the operation of the authorised development.

Application and modification of statutory provisions

6.—(1) The following provisions do not apply in relation to the carrying out of any development, activity or operation for the purposes of the authorised development, or in connection with the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66(c) (powers to make byelaws) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of authority) to the Water Resources Act 1991(d);
- (e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity only;
- (f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (g) the provisions of the Neighbourhood Planning Act 2017(f) insofar as they relate to the temporary possession of land under articles 29 (temporary use of land for constructing the authorised development) and 30 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 of the Forestry Act 1967, any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the construction of the authorised development is deemed to be felling immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act under sub-paragraph (4) of that section.

(a) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

(b) Section 32 was amended by S.I. 2013/755.

(c) Section 66 was amended by paragraphs 25 and 38 of Schedule 1 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).

(d) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(e) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(f) 2017 c. 20.

(3) Regulation 6 of the Hedgerows Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(4) Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012^(b) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph 14(1)(a)(ix) the following—

“or

- (x) so far as such work is necessary to implement development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(5) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010^(c) any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(d) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of the authorised development or in connection with the authorised development and that the nuisance is attributable to the construction, maintenance, operation, use or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), a consent given under section 61 (prior consent for work on construction site), or any document approved under the provisions of Schedule 2 of the Order; or
- (b) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or
- (c) the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for purposes of the authorised development, or in connection with the authorised development.

(a) S.I. 1997/1160.

(b) S.I. 2012/605.

(c) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

(d) 1990 c. 43.

PART 3 STREETS

Street Works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus and electrical cables under the street;
- (d) maintain, change the position or remove apparatus and electrical cables under the street;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc. of streets

9.—(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3.

(2) The undertaker may for the purposes of construction or decommissioning of the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(3) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (4) and (5), the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street within the Order limits, and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(4) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(5) The powers conferred by paragraph (3) may not be exercised without the prior consent of the street authority, such consent to be in a form reasonably required by the street authority.

(6) Paragraphs (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(7) Paragraph (5) does not apply if the street authority has already provided detailed design approval pursuant to paragraph 6(1) of Schedule 2 (requirements) in relation to a street in which the undertaker seeks to use the powers given by paragraph (3).

Construction and maintenance of altered streets

10.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the highway authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and the temporary alterations must be maintained by and at the expense of the undertaker for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development.

(3) Those restoration works carried out pursuant to article 9(4) (power to alter layout, etc. of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary stopping up of and permitting vehicular use on public rights of way

11.—(1) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, temporarily stop up, prohibit the use of, restrict the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (2), prevent all persons from passing along the public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily stopped up) of Schedule 6 (public rights of way) to the extent specified in column 3 of that table; and

(b) the public rights of way specified in column 2 of the table in Part 2 (temporary use of motor vehicles on public right of way) of Schedule 6 (public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily stop up, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) any public right of way specified in paragraph (3) without—

(i) in relation to the construction of the authorised development only, a construction environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 11; and

(ii) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 18;

(b) any other public right of way without the consent of the street authority, and—

(i) in relation to the construction of the authorised development only, a construction environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 11; and

(ii) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 18.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Claimed public right of way

12.—(1) Subject to the provisions of this article, the undertaker may for the purposes of the authorised development stop up, to an extent that does not exceed the limits of the land shown hatched in green on the claimed rights of way plan, any street situated in whole or in part on the land shown hatched in green on the claimed rights of way plan whether or not that street was in existence or recognised on the definitive map on the date this Order is made.

(2) Where a street is stopped up under paragraph (1)—

(a) subject to paragraph (3), all public rights of way over or along a street so stopped up are extinguished;

- (b) subject to paragraph (4), private rights over or along a street so stopped up are extinguished or cease to have effect; and
- (c) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(3) The extinguishment of public rights of way referred to in paragraph (2)(a) will come into effect seven working days after the undertaker serves a notice on the surveying authority giving details of the extent of the stopping up and including a plan showing the extent by which a street referred to in paragraph (1) has been stopped up.

(4) The power conferred by paragraph (1) must not be exercised by the undertaker earlier than the date on which the undertaker has acquired an interest in the land comprised in the extent of the street to be stopped up and the provisions of article 23 (private rights) apply to the extinguishment or cessation of any such private rights.

(5) A notice referred to in paragraph (3) is deemed to be a legal event for the purposes of section 53(3)(a)(i)(a) of the Wildlife and Countryside Act 1981.

(6) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

(7) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) In this article—

“definitive map” has the meaning given to it by section 53(1) of the Wildlife and Countryside Act 1981; and

“surveying authority” has the meaning given to it by section 66(1)(b) (interpretation of Part III) of the Wildlife and Countryside Act 1981 and section 159 of the 2008 Act applies to this article.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in such a form as reasonably required by the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Paragraph (1)(b) does not apply if the relevant planning authority has already provided detailed design approval pursuant to paragraph 6(1) of Schedule 2 (requirements) for the access sought to be formed and lay out pursuant to paragraph (1)(b).

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(a) Section 53 was amended by Schedule 5 to the Countryside and Rights of Way Act 2000 (c. 37) and by section 70(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).

(b) Section 66 was amended by sections 1, 2 and 7 of, and paragraph 7(6) of Schedule 3 to, the Local Government Act 1985. There are other amendments to this section that are not relevant to this Order.

- (b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works), article 10(1) (construction and maintenance of altered streets) and article 13 (access to works); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

15.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of the authorised development, or in connection with the authorised development—

- (a) make provision in respect of those lengths of road specified in column 2 of Part 1 of Schedule 8 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule;
- (b) make provision in respect of those lengths of road specified in column 2 of Part 2 of Schedule 8 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column 3 of that Part of that Schedule; and
- (c) temporarily place traffic signs and signals in the extents of the road specified in column 2 of table 3 in Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a), including, notwithstanding article 3 (development consent etc. granted by this Order), locations outside of the Order limits as shown on the traffic regulation measures plans – temporary measures.

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(a) S.I. 2016/362.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers in paragraph (1) or (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;
- (b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated; and
- (c) either—
 - (i) in relation to the construction of the authorised development only, have first obtained approval under requirement 12 for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or
 - (ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 18 for a decommissioning environmental management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraph (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraph (1) or (2)—

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(b) (road traffic contraventions subject to civil enforcement).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (3), (4) and (9) the undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purposes of the authorised development, or in connection with the authorised development, and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(c).

(a) S.I. 2011/935.
(b) 2004 c. 18.
(c) 1991 c. 56.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs whose consent may be given subject to terms and conditions as that person may reasonably impose.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the Environment Agency, the provisions of Part 4 of Schedule 15 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) The undertaker must take such steps as are reasonably practicable to ensure that water discharged into a watercourse or public sewer or drain pursuant to this article does not enter the public highway.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(a).

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

Removal of human remains

17.—(1) In this article “specified land” means any land within the Order limits.

(2) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the specified land; and
- (b) displaying a notice in a conspicuous place on or near the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) S.I. 2016/1154.

(b) 1991 c. 57.

- (a) removed and reinterred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such reinterment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can not be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and reintering or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (11) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(11) On the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article references to personal representative of the deceased are to a person or persons who—

- (a) is the lawful executor of the estate of the deceased; or
- (b) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(16) Any jurisdiction or function conferred on the county court by this article may be carried out in accordance with any directions which may be given by the Secretary of State.

(17) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) is not to apply to a removal carried out in accordance with this article.

Protective works to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of the authorised development;
- (b) after the completion of the part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning; and
- (c) to facilitate or during decommissioning of any part of the authorised development in the vicinity of the building.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(a) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch. 1 paras 1 and 2).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in the case of dispute, under Part 1) (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance, decommissioning or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance, decommissioning or use of the authorised development.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys for the purposes of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological and archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such

compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5 POWERS OF ACQUISITION

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and article 29 (temporary use of land for constructing the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to paragraph (2) and article 29 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for the purposes of access rights, cable rights and vegetation maintenance rights, by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 9 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) In this article, “access rights”, “cable rights” and “vegetation maintenance rights” have the same meaning as they are defined in Schedule 9 (land in which only new rights etc. may be acquired).

Private rights

23.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker’s appropriation of the land;
 - (iii) the undertaker’s entry onto the land; or
 - (iv) the undertaker’s taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether that title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

24.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted(a).

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Mallard Pass Solar Farm Order [20***].”.

(7) In section 6 (notices after extension of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a) omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration, for paragraph 1(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Mallard Pass Solar Farm Order [20**], which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest: material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

26.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) activities carried out for the purposes of the authorised development or in connection with the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

27.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Mallard Pass Solar Farm Order [20**].”.

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Mallard Pass Solar Farm Order [20**].”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Mallard Pass Solar Farm Order [20**], which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Mallard Pass Solar Farm Order [20**].”.

Rights under or over streets

28.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

29.—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation, compensation or enhancement works identified in the

environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 28 (rights under or over streets).

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping or ecological works where "the maintenance period" means such period as set out in the landscape and ecology management plan which is approved under requirement 7 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

31. Subject to the provisions of Schedule 15 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

32. Where a street is stopped-up or altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc. of streets), article 10 (construction and maintenance of altered streets), article 11 (temporary stopping up of and permitting vehicular use on public rights of way) or article 12 (claimed public right of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 15 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such sewer is removed under article 31, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

34. Subject to article 35 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 3 in relation to which the provisions of this Order have effect for the benefit of the undertaker and National Grid Electricity Transmission plc.

Consent to transfer the benefit of the Order

35.—(1) Subject to paragraph (3), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;
- (b) in respect of Work No. 7, the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(a) 2003 c. 21.

- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (6), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of fourteen (14) days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application of landlord and tenant law

36.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the purposes of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement, so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

38.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the purposes of the authorised development or any apparatus used in connection with the authorised development;
- (b) constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of vehicles to the extent necessary for the purposes of construction or decommissioning of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, subject to paragraph (2) and requirement 7, undertake works to or remove any hedgerows within the Order limits that may be required.

(5) Without prejudice to the generality of paragraph (4), the undertaker may, for the purposes of the authorised development or in connection with the authorised development and subject to paragraph (1)(a), remove the hedgerows specified in column 2 of the table in Schedule 12 (hedgerows to be removed) and shown on the hedgerows plans.

(6) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(7) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

Certification of plans and documents, etc.

39.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 13 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

40.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 14 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(a) S.I. 1997/1160.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Protective Provisions

41. Schedule 15 (protective provisions) has effect.

Service of notices

42.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c. 30.

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals etc.

43.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 16 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 16 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 16 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15 (protective provisions) or any dispute under article 18(6) (protective work to buildings) to which subparagraph (4) applies.

(7) In this article “consenting authority” means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 15 (protective provisions).

Guarantees in respect of payment of compensation

44.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) .

(2) The provisions are—

- (a) article 20 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 23 (private rights);
- (d) article 28 (rights under or over streets);
- (e) article 29 (temporary use of land for constructing the authorised development);

- (f) article 30 (temporary use of land for maintaining the authorised development); and
- (g) article 31 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Compulsory acquisition of land – incorporation of the mineral code

45. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

(a) 1981 c. 67.

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

“existing substation” means the existing substation at Ryhall Substation, Uffington Lane, Essendine, Stamford, PE9 4QD, owned and operated by National Grid Electricity Transmission plc;

“inverter” means electrical equipment required to convert direct current power to alternating current which will either be a string inverter attached to a mounting structure or a central container inverter;

“mounting structure” means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar modules and will either provide for a fixed south facing orientation or single access tracking and mounted on piles driven into the ground or pillars fixed to a concrete foundation;

“PV module” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

“solar station” means a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—

- (a) located outside within a cabinet, on a concrete foundation or placed on metal skids for each of the inverters and transformers and switch gear; or
- (b) housed together within a container sitting on a concrete foundation;

“substation” means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

“switch gear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

“transformer” means a structure serving to transform electricity to a higher voltage which will either be a string transformer or a central container transformer.

In the District of South Kesteven and in the County of Rutland a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises one generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

- (a) solar modules fitted to mounting structures;
- (b) inverters;
- (c) transformers;
- (d) switchgear; and
- (e) electrical cables.

And associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2— works in connection with an onsite substation including—

- (a) substation, switch room buildings and ancillary equipment including reactive power units;
- (b) control building housing offices, storage, welfare facilities, parking areas and access;
- (c) workshop, store and ancillary structures;

- (d) monitoring and control systems for this Work No. 2 and Work No. 1 housed within the control building in Work No. 2(b) or located separately in their own containers or control rooms; and
- (e) harmonic filters.

Work No. 3— works to lay high voltage electrical cables, access and temporary construction compound laydown areas for the electrical cables, to connect to the existing Ryhall substation including—

- (a) Work No. 3A – works to lay electrical cables including 400 kilovolt cable connecting Work No. 2 to the existing substation; and
- (b) Work No. 3B– temporary construction compound laydown areas for the purposes of Work No. 3A.

Work No. 4— works to lay electrical cables including electrical cables connecting Work No. 1 to Work No. 2.

Work No. 5— temporary construction and decommissioning compound and laydown areas including—

- (a) areas of hardstanding;
- (b) HGV, vehicle and cycle parking;
- (c) site and welfare offices, canteens and workshops;
- (d) area to store materials and equipment;
- (e) storage and waste skips;
- (f) area for download and turning;
- (g) security infrastructure, including cameras, perimeter fencing and lighting;
- (h) site drainage and waste management infrastructure (including sewerage); and
- (i) electricity, water and telecommunications connections.

Work No. 6— works to facilitate access to Work Nos. 1 to 5 including—

- (a) creation of accesses from the public highway;
- (b) creation of visibility splays;
- (c) removal of vegetation;
- (d) works to widen and surface the streets; and
- (e) making and maintaining passing places.

Work No. 7— works to create, enhance and maintain green infrastructure, including—

- (a) landscape and biodiversity mitigation and enhancement areas;
- (b) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure; and
- (c) laying down of permissive paths, signage and information boards.

In connection with and in addition to Work Nos. 1 to 7 further associated development within the Order limits comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development and insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement, including—

- (a) fencing, gates, boundary treatments and other means of enclosure;
- (b) bunds, embankments, trenching and swales;
- (c) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;

- (d) irrigation infrastructure, surface water drainage systems, runoff outfalls, SuDs Ponds, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (e) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (g) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, lightning protection masts, weather stations, storage containers, communication infrastructure, and perimeter fencing;
- (h) improvement, maintenance, repair and use of existing streets, private tracks and access roads;
- (i) laying down, maintenance and repair of new internal access tracks, ramps, means of access, cycle routes and roads, signage and information boards;
- (j) temporary footpath diversions;
- (k) landscaping;
- (l) temporary storage of materials prior to installation;
- (m) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land; and
- (n) tunnelling, boring and drilling works.

SCHEDULE 2 REQUIREMENTS

Interpretation

1. In this Schedule—

“both relevant planning authorities” means South Kesteven District Council and Rutland County Council each being the relevant planning authority for part of the authorised development;

“date of final commissioning” means in respect of each phase of the authorised development as approved under requirement 3 the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“decommissioning timing provisions” means provisions relating to the timing for decommissioning works to take place, being all of section 2.4 of the outline operational environmental management plan; and

“relevant highway authority” means the highway authority for the highways that are the subject of a construction traffic management plan submitted pursuant to requirement 13(1).

Commencement of the authorised development

2. The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

Phasing of the authorised development and date of final commissioning

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Notice of the date of final commissioning with respect to each phase of Work No. 1 to complete commissioning must be given to the relevant planning authorities within 15 working days of the date of final commissioning for that phase.

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of both relevant planning authorities or of the relevant planning authority (as applicable) or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) With respect to any plans, details or schemes which have been approved pursuant to any requirement (the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the relevant planning authority or both relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority or both relevant planning authorities (as applicable),

the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Detailed design approval

6.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) drainage, water, electrical, power and communication cables and pipelines;
- (g) vehicular and pedestrian access, parking and circulation areas, junction improvements and passing places; and
- (h) refuse or other storage units, signs and lighting,

relating to that phase have been submitted and approved in writing by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities.

(2) The details submitted must accord with the design guidance and the parameters and with any details approved under requirements 7, 8, 9(1) and 10 and demonstrate how they have taken account of the results of any archaeological investigations or archaeological evaluations carried out pursuant to the outline written scheme of investigation.

(3) The authorised development must be carried out and thereafter maintained in accordance with the approved details.

(4) Where an application is made to the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, to discharge this requirement, such application must include a statement to confirm how the design guidance and parameters have been taken into account in the details that have been submitted.

(5) Sub-paragraph (1) does not apply to the matters listed under sub-paragraph (1)(g) if consent has already been given to the details of those works pursuant to articles 9 (power to alter layout, etc. of streets), 10 (construction and maintenance of altered streets) or 13 (access to works).

Landscape and ecology management plan

7.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a landscape and ecology management plan (which must be substantially in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, following consultation with Natural England and Lincolnshire County Council.

(2) The landscape and ecology management plan must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) for that part and where applicable include for that part—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree, hedgerow and shrub planting and the proposed times of such planting;
- (b) grassland planting, establishment and maintenance (including any necessary updates to the Grassland Establishment Management Plan (Appendix 3 of the outline landscape and ecology management plan));
- (c) any hedgerows proposed for removal that are not shown on the hedgerows plans;
- (d) cultivation, importing of materials and other operations to ensure plant establishment;
- (e) existing trees to be retained;
- (f) an implementation timetable;
- (g) how the plan proposals will contribute to the achievement of a minimum of 65% biodiversity net gain in habitat units and a minimum of 36% biodiversity net gain in hedgerow units for all of the authorised development during the operation of the authorised development and the metric that has been used to calculate that those percentages will be reached;
- (h) how the landscaping and ecological measures proposed in the plan will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 18 (decommissioning and restoration);
- (i) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of, or inform, the ecological mitigation measures and the monitoring regime to be taken forward following those initial surveys; and
- (j) the final routing, specification and maintenance regime for each permissive path.

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority (as applicable), seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(4) Each landscape and ecology management plan approved under sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the relevant phases of the authorised development to which each plan relates.

Fencing and other means of enclosure

8.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising the provision of temporary means of enclosure may start, until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with Lincolnshire County Council.

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with Lincolnshire County Council.

(3) The details submitted under sub-paragraph (2) must be in accordance with the parameters and the design guidance.

(4) For the purposes of sub-paragraph (1), “commence” includes any permitted preliminary works.

(5) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during the construction of the authorised development.

(6) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(7) Any permanent fencing, walls or other means of enclosure for that phase approved under sub-paragraph (2) must be completed prior to the date of final commissioning in respect of such phase.

(8) Any permanent fencing, walls or other means of enclosure must be properly maintained for the operational lifetime of the part of the authorised development.

Surface and foul water drainage

9.—(1) No phase of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (which must be substantially in accordance with the outline surface water drainage strategy) have been submitted to and approved by the local lead flood authority and the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities and both local lead flood authorities.

(2) The design and operation of any phase of the authorised development must be carried out and maintained in accordance with the surface water drainage scheme and (if any) foul water drainage system approved under sub-paragraph (1) for that phase.

(3) No phase of the authorised development may commence until a water management plan (which must be substantially in accordance with the outline water management plan) been submitted to and approved by the local lead flood authority and the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities.

(4) The measures set out in the water management plan submitted for approval under sub-paragraph (3) must be consistent with the details submitted for approval pursuant to requirement 14(1) (soil management plan).

(5) The construction of any phase of the authorised development must be carried out in accordance with the water management plan approved under sub-paragraph (3) for that phase.

Archaeology

10. -(1) The authorised development may not commence until:

(a) A scheme for additional trial trenching has been submitted to and approved by both relevant planning authorities, in consultation with Lincolnshire County Council and Historic England;

(b) Additional trial trenching has been carried out in accordance with the scheme approved under sub-paragraph (a); and

(c) Updates are made to the outline written scheme of investigation to account for the results of the additional trial trenching carried out and the updated outline written scheme of investigation is submitted to and approved in writing by both relevant planning authorities in consultation with Lincolnshire County Council and Historic England.

(2) The authorised development must be carried out in accordance with the updated outline written scheme of investigation approved under paragraph 1(c).

Construction environmental management plan

11.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the outline construction environmental management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative

areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with the Environment Agency and Lincolnshire County Council.

(2) The construction environmental management plan must include detail of any measures required for public rights of way that are temporarily closed.

(3) For the purposes of this requirement 11 only, “commence” includes any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors and site clearance (including vegetation removal and demolition of existing buildings and structures).

(4) The construction of any phase of the authorised development must be carried out in accordance with the approved construction environmental management plan for that phase.

Operational environmental management plan

12.—(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (which must be substantially in accordance with the outline operational environmental management plan and which must include the decommissioning timing provisions) for that phase must be submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with the Environment Agency and Lincolnshire County Council.

(2) The operational environmental management plan must include details of road routes to and from the site for any heavy goods vehicles required during operation.

(3) The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

Construction traffic management plan

13.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with both relevant highway authorities.

(2) Any construction traffic management plan submitted under sub-paragraph (1) must include a construction travel plan (which must be substantially in accordance with the outline travel plan).

(3) The construction of any phase of the authorised development must be carried out in accordance with the approved construction traffic management plan for that phase.

Soil management plan

14.—(1) No phase of the authorised development may commence until a soil management plan, which must include an excavated materials management plan (which must be substantially in accordance with the outline soil management plan and the outline excavated materials management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities. Such approval must be in consultation with the Environment Agency in relation to the excavated materials management plan.

(2) The measures set out in the soil management plan submitted for approval in sub-paragraph (1) must be consistent with the details submitted for approval pursuant to requirement 9(3) (water management plan).

(3) The construction of any phase of the authorised development must be carried out in accordance with the approved soil management plan and excavated materials management plan for that phase.

Ground conditions

15.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising demolition or decommissioning of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only may start, until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase has been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, such approval to be in consultation with the Environment Agency.

(2) The carrying out of any phase of the authorised development must be undertaken in accordance with the strategies approved pursuant to sub-paragraph (1) for that phase.

Operational noise

16.—(1) No phase of the authorised development may be operational until an operational noise assessment containing details of how the design of the authorised development for that phase has incorporated mitigation to ensure that operational noise rating levels (determined in line with BSI British Standards Publication 4142:2014+A1:2019 dated 30 June 2019 (or the current version of that publication if this has been superseded when the assessment is submitted for approval)) not exceeding 35 decibels at residential properties are to be compiled with for that phase has been submitted to and approved by the relevant planning authority for that phase or, where that phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities.

(2) The mitigation measures described in the operational noise assessment must be implemented and maintained as approved throughout the operation of that phase of the authorised development.

Skills, supply chain and employment

17.—(1) No phase of the authorised development may commence until a skills, supply chain and employment plan (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities.

(2) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities.

(3) Any skills, supply chain and employment plan approved under sub-paragraph (1) must be implemented as approved.

Decommissioning and restoration

18.—(1) Decommissioning works must commence no later than 60 years following the date of the final commissioning of the first phase of Work No. 1 to complete commissioning, as notified by the undertaker pursuant to requirement 3(4) (phasing of the authorised development and date of final commissioning).

(2) Prior to the commencement of any decommissioning works and prior to the end of the timeframes established pursuant to the decommissioning timing provisions in a detailed operational environmental management plan approved pursuant to requirement 12, for any part of the authorised development, the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of

both the District of South Kesteven and the County of Rutland) for approval, in consultation with the Environment Agency and Lincolnshire County Council, a decommissioning environmental management plan for that part.

(3) The plans submitted and approved under sub-paragraph (2) must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan.

(4) No decommissioning works must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has/have approved the plan submitted in relation to such works.

(5) The plan submitted to and approved pursuant to sub-paragraph (2) must be implemented as approved for the works required to decommission that phase of the authorised development.

(6) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Long-term flood risk mitigation

19.—(1) If any part of Work No.1 is still in operation on 1 January 2077, the undertaker must notify the relevant planning authority and the Environment Agency whether it anticipates that the operation of Work No. 1 will continue after 31 January 2077.

(2) If a notification under sub-paragraph (1) indicates that the undertaker anticipates that the operation of any part of Work No. 1 will continue after 31 January 2077, it must submit to the relevant planning authority (following consultation with the Environment Agency)—

(a) an updated flood risk assessment of the flood risk arising from the continued operation of that part of Work No. 1 after 31 December 2077;

(b) the details of any mitigation or compensation measures that the flood risk assessment under paragraph (a) recommends are necessary;

(c) the implementation timetable, including identifying the need for (but not requiring a specific programme for the obtaining of) any consents, for any measures identified under paragraph (b); and

(d) retention proposals for any measures identified under paragraph (b) for the remaining lifetime of the authorised development.

unless otherwise agreed in writing by the relevant planning authority, in consultation with the Environment Agency.

(3) The undertaker must implement the measures approved under sub-paragraph (2)(b) in accordance with the implementation timetable approved under sub-paragraph (2)(c) no later than 31 December 2077 or such other time period as is agreed with the relevant planning authority in consultation with the Environment Agency and must retain them for the lifetime of that part of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (2)(d).

(4) The undertaker must not continue operation of Work No. 1 beyond 31 December 2077 unless the relevant planning authority has given its approval following consultation with the Environment Agency under sub-paragraph (2) and the undertaker has complied with sub-paragraph (3) unless otherwise agreed in writing by the relevant planning authority, in consultation with the Environment Agency.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to activities or development carried out for the purposes of the authorised development, or in connection with the authorised development—

- (a) Anglian Water Authority Act 1977(**a**);
- (b) Eastern Midlands Railway (Extensions) Act 1988(**b**);
- (c) Lincoln Waterworks Act 1846(**c**);
- (d) Great Northern Railway (Junctions) Act 1865(**d**);
- (e) Bourn and Essendine Railway Act 1857(**e**);
- (f) Road from James Deeping Stone Bridge through Stamford to Morcott Act 1806(**f**); and
- (g) Road from James Deeping Stone Bridge to Stamford and to Morcott Act 1829(**g**).

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- (a) 1977 c. xiii.
 - (b) 1988 c. lxxv.
 - (c) 1846 c. cxi.
 - (d) 1865 c. cxxvi.
 - (e) 1857 c. xii.
 - (f) 1806 c. xcix.
 - (g) 1829 c. lxxviii.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

“cable works” means works to place, retain and maintain underground apparatus.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the street works</i>
Lincolnshire County Council	Stamford Road B1176	Cable works beneath the width of the highway for the length shown in purple on sheet 1 of the access and rights of way plans, reference SW-1
Rutland County Council	High Street	Cable works beneath the width of the highway for the length shown in purple on sheet 1 of the access and rights of way plans, reference SW-2
Rutland County Council	Stamford Road B1176	Cable works beneath the width of the highway for the length shown in purple on sheet 1 of the access and rights of way plans, reference SW-3
Rutland County Council	The Drift	Cable works beneath the width of the highway for the length shown in purple on sheet 2 of the access and rights of way plans, reference SW-4
Rutland County Council	Public Right of Way – E-169	Cable works beneath the width of the public right of way for the length shown in purple on sheet 2 of the access and rights of way plans, reference SW-5
Rutland County Council	Essendine Road A6121	Cable works beneath the width of the highway for the length shown in purple on sheet 2 of the access and rights of way plans, reference SW-7
Rutland County Council and Lincolnshire County Council	Uffington Lane	Cable works beneath the width of the highway for the length shown in purple on sheets 2 and 4 (Part 1 of 2) of the access and rights of way plans, reference SW-8
Rutland County Council	Public Right of Way – BrAW/1/1	Cable works beneath the width of the public right of way for the length shown in purple on sheet 3 of the access and rights of way plans, reference SW-9
Rutland County Council	Main Street	Cable works beneath the width

		of the highway for the length shown in purple on sheet 4 (Part 1 of 2) of the access and rights of way plans, reference SW-10
Rutland County Council	Public Right of Way – BrAW/1/1	Cable works beneath the width of the public right of way for the length shown in purple on sheet 3 of the access and rights of way plans, reference SW-12

SCHEDULE 5

Articles 9 and 10

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
Lincolnshire County Council	Stamford Road B1176	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 1 of the access and rights of way plans, reference AS-1
Rutland County Council	Stamford Road B1176	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheets 1 and 2 of the access and rights of way plans, reference AS-2
Rutland County Council	Junction of Uffington Lane / Essendine Road A6121	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 2 of the access and rights of way plans, reference AS-3
Rutland County Council and Lincolnshire County Council	Carlby Road	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 3 of the access and rights of way plans, reference AS-4
Rutland County Council	Uffington Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheets 2 and 4 (Part 1 of 2) of the access and rights of way plans, reference AS-6
Rutland County Council	Uffington Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 4 (Part 1 of 2) of the access and rights of way plans, reference AS-8

Rutland County Council	Uffington Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 4 (Part 1 of 2) of the access and rights of way plans, reference AS-10
Rutland County Council	Main Street	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 4 (Part 1 of 2) of the access and rights of way plans, reference AS-12
Rutland County Council and Lincolnshire County Council	Uffington Lane	Works for the provision of a permanent means of access to the authorised development within the area shown hatched in orange on sheet 4 (Part 1 of 2) of the access and rights of way plans, reference AS-13

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
Rutland County Council	Uffington Lane	Works for the provision of temporary passing places along Uffington Lane, area shown hatched light blue on sheets 2 and 4 (Part 2 of 2) of the access and rights of way plans, reference AS-5
Rutland County Council	Uffington Lane	Works for the provision of temporary passing places along Uffington Lane, area shown hatched light blue on sheet 4 (Part 2 of 2) of the access and rights of way plans, reference AS-7
Rutland County Council	Uffington Lane	Works for the provision of temporary passing places along Uffington Lane, area shown hatched light blue on sheet 4 (Part 2 of 2) of the access and rights of way plans, reference AS-9
Rutland County Council	Uffington Lane	Works for the provision of temporary passing places along Uffington Lane, area shown hatched light blue on sheet 4 (Part 2 of 2) of the access and rights of way plans,

		reference AS-11
Rutland County Council	Junction of Ryhall Road, Turnpike Road, Stamford Road B1176 and Essendine Road A6121	Works to enable the passage to the authorised development of abnormal indivisible loads, including road strengthening and temporary removal of street furniture, within the area from the eastern end of Ryhall Road, area shown hatched light blue on sheet 6 of the access and rights of way plans, reference AS-14
Rutland County Council	Junction of Ryhall Road and Old Great North Road	Works to enable the passage to the authorised development of abnormal indivisible loads, including road strengthening and temporary removal of street furniture, within the area from the southwestern end of Ryhall Road, area shown hatched light blue on sheet 6 of the access and rights of way plans, reference AS-15

SCHEDULE 6

Article 11

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure</i>
Rutland County Council	Public Right of Way – E-169 From a start point shown as reference PRoW1A on sheet 4 of the traffic regulation measures plans – temporary road closures plans, for a distance of 872m in a generally south-easterly direction to the point shown as reference PRoW1B as shown on sheets 4 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker
Rutland County Council	Public Right of Way – BrAW/1/1 From a start point shown as reference PRoW2A on sheet 5 of the traffic regulation measures plans – temporary road closures plans, for a distance of 460m in a generally southerly direction to the point shown as reference PRoW2B as shown on sheet 6 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker
Rutland County Council	Public Right of Way – BrAW/1/1 From a start point shown as reference PRoW3A on sheet 6 of the traffic regulation measures plans – temporary road closures plans, for a distance of 39m in a generally southerly direction to the point shown as reference PRoW3B as shown on sheet 6 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker

PART 2

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Rutland County Council	Public Right of Way – E-169 between the points marked MV-A1 and MV-A2 on sheet 2 of the access and rights of way plans	Motor vehicles under the direction of the undertaker may pass along, or cross, the length of the public right of way
Rutland County Council	Public Right of Way – BrAW/1/1 between the points marked MV-B1 and MV-B2 on sheet 3 of the access and rights of way plans	Motor vehicles under the direction of the undertaker may pass along, or cross, the length of the public right of way
Rutland County Council and Lincolnshire County Council	Public Right of Way – BrAW/1/1 between the points marked MV-C1 and MV-C2 on sheet 3 of the access and rights of way plans	Motor vehicles under the direction of the undertaker may pass along, or cross, the length of the public right of way

SCHEDULE 7

Article 13

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
Lincolnshire County Council	Stamford Road B1176	The provision of a permanent means of access to the authorised development from the western side of Stamford Road B1176 between the points marked H1 and H2 on sheet 1 of the access and rights of way plans
Rutland County Council	Stamford Road B1176	The provision of a permanent means of access to the authorised development from the eastern side of Stamford Road B1176 between the points marked F1 and F2 on sheets 2 and 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council	Junction of Stamford Road B1176 / The Drift	The provision of a permanent means of access to the authorised development from the western side of Stamford Road B1176 where it intersects with The Drift between the points marked G1 and G2 on sheets 2 and 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council and Lincolnshire County Council	Carlby Road	The provision of a permanent means of access to the authorised development from the southern side of Carlby Road between the points marked E1 and E2 on sheet 3 of the access and rights of way plans
Rutland County Council	Uffington Lane	The provision of a permanent means of access to the authorised development from the north-eastern side of Uffington Lane between the points marked A1 and A2 on sheet 4 (Part 1 of 2) of access and rights of way plans
Rutland County Council	Uffington Lane	The provision of a permanent means of access to the authorised development from the eastern side of Uffington

		Lane between the points marked B1 and B2 on sheet 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council	Uffington Lane	The provision of a permanent means of access to the authorised development from the eastern side of Uffington Lane between the points marked C1 and C2 on sheet 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council	Uffington Lane	The provision of a permanent means of access to the authorised development from the eastern side of Uffington Lane between the points marked D1 and D2 on sheet 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council and Lincolnshire County Council	Main Street	The provision of a permanent means of access to the authorised development from the northern side of Main Street between the points marked I1 and I2 on sheet 4 (Part 1 of 2) of the access and rights of way plans
Rutland County Council and Lincolnshire County Council	Main Street	The provision of a permanent means of access to the authorised development from the southern side of Main Street between the points marked J1 and J2 on sheet 4 (Part 1 of 2) of the access and rights of way plans

SCHEDULE 8

Article 15

TRAFFIC REGULATION MEASURES

PART 1

TEMPORARY SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Temporary speed limit</i>
Rutland County Council and Lincolnshire County Council	Stamford Road B1176 From a point 205m in a generally northerly direction from its junction with High Street (reference SL1B) for a distance of 544m in a generally northerly direction (to reference SL1A) as shown on sheet 1 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	Stamford Road B1176 From a point 125m in a generally southerly direction from its junction with Barbers Hill House (reference SL2A) for a distance of 412m in a generally southerly direction (to reference SL2B) as shown on sheet 2 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	High Street From a point 235m in a generally westerly direction from its junction with Pickworth Road (reference SL3B) for a distance of 620m in a generally westerly direction (to reference SL3A) as shown on sheet 2 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	Stamford Road B1176 From a point 455m in a generally southerly direction from its junction with High Street (reference SL4A) for a distance of 560m in a generally southerly direction (to reference SL4B) as shown on sheet 3 of the traffic regulation measures plans –	30 miles per hour

	temporary measures	
Rutland County Council and Lincolnshire County Council	Carlby Road From a point 410m in a generally easterly direction from its junction with Essendine Road A6121 (reference SL5A) for a distance of 605m in a generally easterly direction (to reference SL5B) as shown on sheet 4 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	Essendine Road A6121 From a point 745m in a generally north-easterly direction from its junction with Crown Street (reference SL6A) for a distance of 1554m in a generally north-easterly direction (to reference SL6B) as shown on sheets 5 and 6 of the traffic regulation measures plans – temporary measures	20 miles per hour
Rutland County Council	Uffington Lane From a point 320m in a generally south-easterly direction from its junction with Essendine Road A6121 (reference SL7A) for a distance of 600m in a generally south-easterly direction (to reference SL7B) as shown on sheet 7 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	Uffington Lane From a point 45m in a generally northerly direction from its junction with Main Street (reference SL8B) for a distance of 600m in a generally northerly direction (to reference SL8A) as shown on sheet 8 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council	Main Street From a point 190m in a generally easterly direction from its junction with Uffington Lane (reference SL9A) for a distance of 600m in a generally easterly direction (to reference SL9B) as shown on sheet 9 of the traffic regulation measures plans – temporary measures	30 miles per hour
Rutland County Council and Lincolnshire County Council	Uffington Lane From a point 20m in a generally southerly	30 miles per hour

	direction from its junction with Main Street (reference SL10A) for a distance of 600m in a generally southerly direction (to reference SL10B) as shown on sheet 10 of the traffic regulation measures plans – temporary measures	
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PART 2
TEMPORARY ROAD CLOSURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Temporary road closures</i>
Rutland County Council and Lincolnshire County Council	Stamford Road B1176 From its junction with Barbers Hill House (reference RC-1A) in a generally southerly direction for a distance of 1130m (to reference RC-1B) as shown on sheets 1 and 3 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker
Rutland County Council	High Street From its junction with Vale Farm (reference RC-2A) in a generally easterly direction for a distance of 790m (to reference RC-2B) as shown on sheets 1 and 2 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker
Rutland County Council and Lincolnshire County Council	Uffington Lane From its junction with Essendine Road A6121 (reference RC-3A) in a generally south-easterly direction for a distance of 2780m (to reference RC-3B) as shown on sheets 7-11 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker
Rutland County Council	Main Street From its junction with Uffington Lane (reference RC-4A) in a generally easterly direction for a distance of 660m (to reference RC-4B) as shown on sheets 9 and 10 of the traffic regulation measures plans – temporary road	Closed to all traffic save for traffic under the direction of the undertaker

	closures	
Rutland County Council	Pickworth Road From its junction with High Street (reference RC-5A) in a generally south-easterly direction for a distance of 1,590m (to reference RC-5B) as shown on sheets 12 and 13 of the traffic regulation measures plans – temporary road closures	Closed to all traffic save for traffic under the direction of the undertaker

PART 3
TEMPORARY TRAFFIC SIGNALS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of temporary traffic signals</i>
Rutland County Council and Lincolnshire County Council	Stamford Road B1176 An area of existing highway from a point 425m in a generally northerly direction from its junction with High Street for a distance of 100m in a generally northerly direction and including the means of access to the authorised development, as shown on sheet 1 of the traffic regulation measures plans – temporary measures (reference TS1)
Rutland County Council	Stamford Road B1176 An area of existing highway from a point 240m in a generally southerly direction from Barbers Hill House for a distance of 180m in a generally southerly direction and including the means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plans – temporary measures (reference TS2)
Rutland County Council	High Street An area of existing highway from a point 120m in a generally easterly direction from Vale Farm for a distance of 300m in a generally easterly direction and including the means of access to the authorised development, as shown on sheet 2 of the traffic regulation measures plans – temporary measures (reference TS3)
Rutland County Council	Stamford Road B1176 An area of existing highway from a point 715m in a generally southerly direction from its junction with High Street for a distance of 150m in a generally southerly direction and including the means of access to the authorised development, as shown on sheet 3 of the traffic regulation measures plans – temporary measures (reference TS4)
Rutland County Council and Lincolnshire County Council	Carlby Road An area of existing highway from a point 675m in a generally easterly direction from its junction with Essendine Road A6121 for a distance of 100m in a generally easterly direction and including the means of access to the authorised development, as shown on sheet 4 of the traffic regulation measures plans – temporary measures (reference TS5)

Rutland County Council	<p>Essendine Road A6121</p> <p>An area of existing highway from a point 995m in a generally north-easterly direction from its junction with Crown Street for a distance of 1315m in a generally north-easterly direction and including the means of access to the authorised development, as shown on sheets 5 and 6 of the traffic regulation measures plans – temporary measures (reference TS6)</p>
Rutland County Council	<p>Uffington Lane</p> <p>An area of existing highway from a point 890m in a generally south-easterly direction from its junction with Essendine Road A6121 for a distance of 100m in a generally south-easterly direction and including the means of access to the authorised development, as shown on sheet 7 of the traffic regulation measures plans – temporary measures (reference TS7)</p>
Rutland County Council	<p>Uffington Lane</p> <p>An area of existing highway from a point 295m in a generally North-westerly direction from its junction with Main Street for a distance of 100m in a generally North-westerly direction and including the means of access to the authorised development, as shown on sheet 8 of the traffic regulation measures plans – temporary measures (reference TS8)</p>
Rutland County Council	<p>Main Street</p> <p>An area of existing highway from a point 445m in a generally easterly direction from its junction with Uffington Lane for a distance of 100m in a generally easterly direction and including the means of access to the authorised development, as shown on sheet 9 of the traffic regulation measures plans – temporary measures (reference TS9)</p>
Rutland County Council and Lincolnshire County Council	<p>Uffington Lane</p> <p>An area of existing highway from a point 260m in a generally south-easterly direction from its junction with Main Street for a distance of 100m in a generally south-easterly direction and including the means of access to the authorised development, as shown on sheet 10 of the traffic regulation measures plans – temporary measures (reference TS10)</p>

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“access rights” means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), means of access to the authorised development including visibility splays and to remove and traverse impediments (including vegetation) to such access;
- (b) remove, reinstate passing places in the highway and means of access to the authorised development including visibility splays and to remove impediments to such access; and
- (c) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface);

“cable rights” means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other apparatus, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“substation connection rights” means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid Ryhall substation;
- (b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain public sewers and drains and drainage apparatus and equipment;
- (c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with Work No. 3;
- (d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures;

“vegetation maintenance rights” means rights over land to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain vegetation and restrict or prevent the removal of vegetation for the purposes of the authorised development and in connection with the authorised development; and

“AIL rights” means rights over land to, for the purposes of the authorised development and in connection with the authorised development — pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any surface) and to temporarily remove impediments to such passage.

<i>(1)</i> <i>Plot reference number shown on the Land Plans</i>	<i>(2)</i> <i>Purposes for which rights over land may be required and restrictive covenants imposed</i>
01-02	Vegetation maintenance rights
01-03	Vegetation maintenance rights
01-05	Vegetation maintenance rights
01-06	Access rights and vegetation maintenance rights
01-10	Vegetation maintenance rights
01-10a	Cable rights and vegetation maintenance rights
01-19	Cable rights
01-20	Cable rights and vegetation maintenance rights
01-21	Cable rights
01-22	Cable rights
01-23	Cable rights
01-24	Cable rights
01-25	Cable rights
01-26	Cable rights
01-27	Cable rights
01-28	Cable rights
01-29	Cable rights
01-30	Cable rights
01-31	Cable rights and vegetation maintenance rights
01-32	Cable rights and vegetation maintenance rights
01-34	Vegetation maintenance rights
01-35	Cable rights and vegetation maintenance rights
01-36	Cable rights and vegetation maintenance rights
01-37	Cable rights
01-37a	Access rights and cable rights
01-38	Cable rights
01-39	Cable rights
01-40	Cable rights and vegetation maintenance rights
01-41	Cable rights
01-41a	Access rights and cable rights
01-42	Cable rights and vegetation maintenance rights
01-44	Access rights, cable rights and vegetation maintenance rights
01-45	Access rights, cable rights and vegetation maintenance rights
01-46	Access rights, cable rights and vegetation maintenance rights
01-47	Access rights and cable rights
02-01	Access rights and cable rights
02-02	Access rights, cable rights and vegetation maintenance

	rights
02-04	Access rights, cable rights and vegetation maintenance rights
02-05	Access rights and cable rights
02-06	Access rights, cable rights and vegetation maintenance rights
02-09	Cable rights and vegetation maintenance rights
02-10	Cable rights
02-11	Cable rights
02-12	Access rights and cable rights
02-13	Access rights and cable rights
02-14	Vegetation maintenance rights
02-16	Access rights and vegetation maintenance rights
02-18	Vegetation and maintenance rights
02-19	Vegetation and maintenance rights
02-21	Vegetation and maintenance rights
02-22	Vegetation and maintenance rights
02-24	Vegetation and maintenance rights
02-25	Vegetation and maintenance rights
02-27	Vegetation and maintenance rights
02-28	Cable rights
02-29	Cable rights
02-30	Cable rights
02-31	Cable rights
02-32	Cable rights
02-33	Cable rights
02-34	Cable rights
02-35	Cable rights
02-36	Access rights, cable rights and AIL rights
02-37	Vegetation maintenance rights
02-38	Access rights, cable rights and AIL rights
02-41	Access rights, cable rights and AIL rights
02-43	Access rights, cable rights and AIL rights
02-44	Access rights, cable rights and AIL rights
02-45	Access rights, cable rights and AIL rights
02-46	Access rights, cable rights and AIL rights
02-47	Access rights, cable rights and AIL rights
02-49	Access rights, cable rights and AIL rights
02-51a	Cable rights
02-51b	Cable rights
02-52a	Cable rights
02-52b	Cable rights
02-53	Cable rights and vegetation maintenance rights
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02-133	Cable rights
02-134	Cable rights
02-135	Cable rights
02-138a	Cable rights
02-139	Cable rights
02-140	Cable rights
02-141	Cable rights
02-142	Cable rights
02-144	Cable rights
02-145	Cable rights
02-146	Cable rights
02-147	Cable rights and vegetation maintenance rights
02-149	Cable rights
02-150	Access rights and vegetation maintenance rights
02-151	Cable rights
03-03	Access rights and vegetation maintenance rights
03-06	Vegetation maintenance rights
04-01	Access rights and cable rights
04-02	Access rights and cable rights
04-03	Access rights and cable rights
04-04	Access rights and cable rights
04-05	Access rights, cable rights and vegetation maintenance rights
04-08	Substation connection rights and vegetation maintenance rights
04-09	Access rights, cable rights and substation connection rights
04-10	Access rights, cable rights, substation connection rights and vegetation maintenance rights
04-11	Access rights, cable rights, substation connection rights and vegetation maintenance rights
04-12	Access rights and cable rights

04-13	Access rights, cable rights and vegetation maintenance rights
04-14	Access rights and cable rights
04-15	Access rights, cable rights and vegetation maintenance rights
04-18	Access rights and cable rights
04-19	Cable rights
04-20	Access rights and cable rights
04-22	Cable rights
04-23	Access rights and cable rights
04-25	Access rights and cable rights
04-26	Access rights and cable rights
04-27	Access rights and cable rights
04-28	Access rights and cable rights
04-29	Access rights, cable rights and vegetation maintenance rights
04-31	Access rights and cable rights
04-32	Access rights and cable rights
04-33	Access rights and cable rights
04-34	Access rights and cable rights
04-35	Cable rights
04-35a	Access rights, cable rights and vegetation maintenance rights
04-36	Access rights and cable rights
04-37	Access rights and cable rights
04-38	Access rights and cable rights
04-39	Access rights, cable rights and vegetation maintenance rights
04-40	Access rights, cable rights and vegetation maintenance rights
04-42	Cable rights and vegetation maintenance rights
04-43	Cable rights and vegetation maintenance rights
04-47	Access rights and vegetation maintenance rights
04-48	Vegetation maintenance rights
04-51	Access rights and cable rights
04-52	Access rights, cable rights and vegetation maintenance rights
04-53	Access rights, cable rights and vegetation maintenance rights
04-54	Vegetation maintenance rights
05-02	Vegetation maintenance rights
06-01	Access rights and AIL rights
06-02	Access rights and AIL rights
06-03	Access rights and AIL rights
06-04	Access rights and AIL rights
06-05	Access rights and AIL rights

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 to the Mallard Pass Solar Farm Order [20**];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 to the Mallard Pass Solar Farm Order [20**]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 20 (compulsory acquisition of land) and as modified by article 27 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Mallard Pass Solar Farm Order [20**] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Mallard Pass Solar Farm Order [20**] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter notice, or
- (c) refer the counter notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 11

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot reference number</i> <i>shown on the Land</i> <i>Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be</i> <i>taken</i>	<i>(3)</i> <i>Work No.</i>
01-07	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-08	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-09	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-11	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-12	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-13	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
01-14	Works to facilitate access to Work Nos. 1 to 5 including:	Work No. 6

	<ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	
01–15	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
01–16	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
01–17	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
01–18	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
02–15	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
02–17	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6
03–02	<p>Works to facilitate access to Work Nos. 1 to 5 including:</p> <ul style="list-style-type: none"> – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal 	Work No. 6

03-04	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
03-06	Works to facilitate access to Work Nos. 1 to 5 including: –Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6
04-46	Works to facilitate access to Work Nos. 1 to 5 including: – Creation of accesses from the public highway; – Creation of visibility plays; – Works to widen and surface the public highway; and – Vegetation removal	Work No. 6

SCHEDULE 12

Article 38

HEDGEROWS TO BE REMOVED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of hedgerow and extent of removal</i>
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 1 of 5), reference H1
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 1 of 5), reference H2
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 1 of 5), reference H3
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 2 of 5), reference H4
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 3 of 5), reference H5
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H6
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H7
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H8
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H9
	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H10
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H11
Rutland County Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H12

	5), reference H12
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H13
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H14
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H15
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 4 of 5), reference H16
South Kesteven District Council	Removal of that part of the hedgerow shown approximately within the area identified by an orange line on the hedgerows plans (Sheet 5 of 5), reference H17

SCHEDULE 13

Article 39

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plans	2.4	1	10 October 2023
book of reference	4.3	8	16 November 2023
claimed public right of way plan	2.8	2	10 October 2023
design and access statement	7.3	2	5 September 2023
environmental statement	environmental statement 6.1 (excluding chapter 5 and 17)	0	24 November 2022
	environmental statement 6.1 (chapter 5)	2	15 June 2023
	environmental statement 6.1 (chapter 17)	1	15 June 2023
	environmental statement 6.2 (excluding appendix 5.1, 10.2 and 10.5)	0	24 November 2022
	environmental statement 6.2 (appendix 5.1)	3	10 October 2023
	environmental statement 6.2 (appendix 10.2, 10.5)	1	15 June 2023
	environmental statement 6.3 (excluding figure 6.4)	0	24 November 2022
	environmental statement 6.3 (figure 6.4)	1	15 June 2023
hedgerows plans	2.5	0	24 November 2022
land plans	2.1	4	10 November 2023
outline construction environmental management plan	7.6	9	1 November 2023
outline construction traffic management plan	7.11	6	10 October 2023
outline travel plan	7.14	1	5 September 2023
outline decommissioning environmental management plan	7.8	6	16 November 2023

outline excavated materials management plan	7.12	0	24 November 2022
outline landscape and ecology management plan	7.9	5	10 October 2023
outline operational environmental management plan	7.7	7	16 November 2023
outline employment, skills and supply chain plan	7.10	2	19 September 2023
outline soil management plan	7.12	6	1 November 2023
outline surface water drainage strategy	6.2	1	5 September 2023
outline water management plan	7.13	2	10 November 2023
outline written scheme of investigation	9.40	2	25 October 2023
parameters	environmental statement 6.2 (appendix 5.1)	3	10 October 2023
traffic regulation measures plans – road closures	2.7	2	5 September 2023
traffic regulation measures plans – temporary measures	2.7	2	10 October 2023
works plans	2.2	3	10 October 2023

SCHEDULE 14

Article 40

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objection it wishes to make to the claimant’s statements, comments on the claimant’s expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent’s submissions;
- (c) any expert report in response to the respondent’s submissions;

- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and
- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 6 of this Schedule;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

(a) 1989 c. 29.

(b) 1991 c. 56.

- (c) water undertaker within the meaning of the Water Industry Act 1991;
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
 - (e) an owner or operator of apparatus within paragraph (e) of the definition of that term,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of and permitting vehicular use on public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it

withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

13. The exercise of the powers of article 31 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

(a) 2003 c. 21.

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 40 (arbitration).

15. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

17.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 27(3)(b)).

Interpretation

18. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-“ if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance will be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance will include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;

- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker’s liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker’s liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule will include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Gas’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas; construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Gas House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which will have been approved by National Gas acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

19. Except for paragraphs 20 (apparatus of National Grid in stopped up streets), 25 (retained apparatus: protection), 26 (expenses) and 27 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Gas in stopped up streets

20.—(1) Where any street is stopped up under article 8 (street works), 9 (power to alter layout, etc. of streets), 10 (construction and maintenance of altered streets) or 11 (temporary stopping up of and permitting vehicular use on public rights of way), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the

removal of that apparatus under paragraph 23 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 25.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of and permitting vehicular use on public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

21. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Gas under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

23.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

24.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 31 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

25.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must consider the existing pipeline's cathodic protection system and provide an earthing assessment where required by National Gas.

(4) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(5) Any approval of National Gas required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (9) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(8) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Gas in accordance with sub-paragraph (5) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (8) and (9) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

Expenses

26.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 31 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph

(1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 27; and/or

- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working, or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied—

- (a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 27(7) on this Part of this Schedule, nothing in this Part of this Schedule will prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

29.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 23(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 25, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

30. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

31. Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1) and 25 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 40 (arbitration).

Notices

32. Notwithstanding article 42 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 25 must be submitted to <https://lsbud.co.uk/> or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

33.—(1) — For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to 43(3)(b)).

Interpretation

34. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-“ if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody's Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance will be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance will include (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker’s liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989 belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule will include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored,

the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“incentive deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which will have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 39(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 39(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

35. Except for paragraphs 36 (apparatus of National Grid in stopped up streets), 41 (retained apparatus: protection), 42 (expenses) and 43 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in stopped up streets

36.—(1)— Where any street is stopped up under article 8 (street works), 9 (power to alter layout, etc., of streets), 10 (construction and maintenance of altered streets) or 11 (temporary stopping up of and permitting vehicular use on public rights of way), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 39 of the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 41.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11, National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

37. The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

38.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 41 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

39.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 40(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

40.—(1) — Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 47 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the

payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

41.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (7); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 33 to 35 and 38 to 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

42.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 39(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

43.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 43; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working, or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and, if reasonably requested to do so by the undertaker, National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for is apparatus or any other interest to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied—

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and the undertaker has procured acceptable insurance (all provided evidence to National Grid that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with (7) of this Part of this Schedule, nothing in this Part of this Schedule will prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

44. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

45.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 39(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 41, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

46. If in consequence of the agreement reached in accordance with paragraph 38(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

47. Save for differences or disputes arising under paragraphs 39(2), 39(4), 40(1) and 41 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 40 (arbitration).

Notices

48. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 41 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

49.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” must be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“Gwash to Glen pipeline” means the pipeline running from the River Gwash to River Glen for the purposes of transferring water shown indicatively on the Gwash to Glen pipeline plan;

“Gwash to Glen pipeline plan” means the Gwash to Glen Transfer Scheme, Trunk Main – Plan & Longitudinal Section, September 1987;

“GPR pipeline plan” means the plan produced pursuant to paragraph 58(1);

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

- (a) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or
 - (ii) interfere with the Agency’s access to or along that remote defence;
- (b) 8 metres of a drainage work or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;or

(c) 3.5 metres of the Gwash to Glen pipeline as shown on the GPR pipeline plan produced pursuant to paragraph 58(1);

or which involves—

(d) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken) including hydrodynamic dredging or desilting; and

(e) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

50.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 61.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within two months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

51. Without limiting paragraph 50, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

52.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 51, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this schedule

53.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 61.

Maintenance of works

54.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 61.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

55. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make

good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

56. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

Free passage of fish

57.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

The Gwash to Glen pipeline

58.—(1) The undertaker must not carry out any part of the authorised development within the vicinity of the Gwash to Glen pipeline as shown on the Gwash to Glen pipeline plan until the Agency has carried out ground penetrating radar survey to identify the precise location of the Gwash to Glen pipeline and provided to the undertaker a plan showing the result of the survey.

(2) If, in consequence of specified works taking place within 3.5 metres of the Gwash to Glen pipeline, access to the pipeline is obstructed, the undertaker must provide such alternative means of access to the Gwash and Glen pipeline as will enable the Agency to maintain or operate the Gwash and Glen pipeline no less effectively than was possible before such obstruction.

(3) In the event of any damage to the Gwash and Glen pipeline the undertaker must notify the Agency as soon as practicable.

Indemnity

59. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

60.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the authorised development; or
- (b) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs;

“losses” includes physical damage;

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
- (b) any interest element of sums claimed or demanded; and

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty; and
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

61. Any dispute arising between the undertaker and the Agency under this Part of this Schedule will, if the parties agree, be determined by arbitration under article 40 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

62. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

63. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they are taken to have the same meaning;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Apparatus in stopped up streets

64.—(1) Where any street is stopped up under article 11 (temporary stopping up of and permitting vehicular use on public rights of way), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 67 or the power of the undertaker to carry out works under paragraph 69.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11, Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

65. The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

66. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

67.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 68.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed

details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

68.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

69.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 67(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 67(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new

plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using reasonable endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and
- (c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

70.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from the sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

71.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 65 or 67(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or

alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water, accompanied by an invoice or claim from Anglian Water, in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

72.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 67(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 69, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(4) The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 7

FOR THE PROTECTION OF RAILWAY INTERESTS

73. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 87 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

74. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain authorised development) in respect of such works.

75.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network

Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

76.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 5 (power to maintain authorised development);
- (c) article 16 (discharge of water);
- (d) article 19 (authority to survey and investigate the land);
- (e) article 20 (compulsory acquisition of land);
- (f) article 22 (compulsory acquisition of rights);
- (g) article 23 (private rights);
- (h) article 25 (acquisition of subsoil only);
- (i) article 26 (power to override easements and other rights);
- (j) article 29 (temporary use of land for constructing the authorised development);
- (k) article 30 (temporary use of land for maintaining the authorised development);
- (l) article 31 (statutory undertakers);
- (m) article 38 (felling or lopping of trees and removal of hedgerows);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 31 (statutory undertakers), article 26 (power to override easements and other rights) or article 23 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it will never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

77.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

78.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 77(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 77;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction will be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all

reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

79. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

80. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

81.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 77(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 82(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

82. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 77(3) or in constructing any protective works under the provisions of paragraph 77(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it will be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far

as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

83.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 77(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 77(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 77(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker will test the use of the authorised development in a manner that will first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker will not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 78.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 87(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 82(a) any modifications to Network Rail's apparatus under this paragraph will be deemed to be protective works referred to in that paragraph.

84. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

85. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

86. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

87.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employment or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) will if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

88. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 87) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

89. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

90. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

91. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

92. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 35 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

93. The undertaker must, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans and documents, etc.), provide a set of those certified plans to Network Rail in a format specified by Network Rail.

94. Any difference under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined by arbitration in accordance with article 40 (arbitration).

PART 8

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

95. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

96. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections (including transformed rectifiers and associated groundbeds or cables), cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this

Part of this Schedule includes the use and maintenance of the authorised development including the construction of any works undertaken pursuant to this Schedule;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in article 2 of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of the Schedule only the terms commence and commencement include operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures within 15 metres in any direction of Cadent’s apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes notwithstanding article 2 of the Order, the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to Cadent and which has been approved by Cadent acting reasonably;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any part of the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 101(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 101(2) or otherwise; and/or
- (c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent’s policies for safe working in the vicinity of Cadent’s apparatus); and

“undertaker” means the undertaker as defined in article 2 of this Order.

On street apparatus

97.—(1) Except for paragraphs 98 (apparatus of Cadent in stopped up streets), 101 (removal of apparatus) in so far as sub-paragraph (2) applies, 102 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) applies, 103 (retained apparatus: protection of Cadent), 104 (expenses) and 105 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 101 and 102 of this Part of this Schedule apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 11 (temporary stopping up of and permitting vehicular use on public rights of way) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder does not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

98.—(1) Where any street is stopped up under article 11 (temporary stopping up of and permitting vehicular use on public rights of way), if Cadent has any apparatus in the street or accessed via that street, Cadent must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 101.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11, Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 32 (apparatus and rights of statutory undertakers in stopped up streets) of the Order which does not apply to Cadent.

Protective works to buildings

99. The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent.

Acquisition of land

100.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land

belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 103 or any other paragraph of this Part of this Schedule, do not constitute agreements under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 101 do not apply, the undertaker must—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

101.—(1) If, in the exercise of the agreement reached in accordance with paragraph 100 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 102(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

102.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 109 (arbitration) of this Part of this Schedule and the arbitrator makes such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

103.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) a cathodic protection/earthing assessment.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of the authorised development (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3), (6) and (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 101(2), provided that such written notice must be given by Cadent to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph (1).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "CD/SP/SSW/22 Cadent's policies for safe working in the vicinity of Cadent's Assets" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 104.

Expenses

104.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of the authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 101(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works (including any protective works pursuant to article 18 (protective works to buildings)), plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if required;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and
- (g) any watching brief pursuant to paragraph 103(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

105.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and Cadent.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) the authorised development and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any part of the authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 105.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaking and considering its representations.

Enactments and agreements

106. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

107.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 101(2)

or Cadent makes requirements for the protection or alteration of apparatus under paragraph 103, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

108. If in consequence of the agreement reached in accordance with paragraph 100(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

109. Save for paragraphs 101(2), 101(4), 102(1) and 103, any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 40 (arbitration).

Notices

110. The plans submitted to Cadent by the undertaker pursuant to paragraph 103(1) must be sent to Cadent Gas Limited Plant Protection by email to plantprotection@cadentgas.com copied by email to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation**1.** In this Schedule—

“discharge” means any consent, agreement or approval required by—

- (a) a requirement;
- (b) a document referred to by a requirement; or
- (c) a document that has been approved pursuant to a requirement;

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 4(2)(b).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 4~~3~~, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any discharge and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and the application is accompanied by a report pursuant to sub-paragraph 3 which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority considers that the subject matter of such applications will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any discharge or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

- (d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (d);
- (f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable; and
- (g) the appointment of the person pursuant to sub-paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must as soon as reasonably practicable, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (d) to (f) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

- (a) a fee of £2,535 for the first application for the discharge of each of the requirements 6, 7, 8, 9, 11, 12 and 18;
- (b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and
- (c) a fee of £145 for any application for the discharge of—
 - (i) any other requirements not listed in paragraph (a);
 - (ii) any application under requirement 5 in respect of requirements not listed in paragraph (a); and
 - (iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

(3) Where an application under sub-paragraph (1) is made and a fee payable on or after 1 April 2025, then section 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Amendment Regulations 2023) will apply as modified by this Order, so that “the relevant amount” means the fee payable under this sub paragraph (2)(a), 2(b) or 2(c) above.

(4) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the decision period as determined under paragraph 2(1) and 2(2) (as relevant) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period for determining the application has been agreed pursuant to paragraph 2(1) or 2(2) of this Schedule (as relevant).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Mallard Pass Solar Farm Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 39 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at Stamford Library, 30 High St, Stamford, Lincolnshire, PE9 2BB.

PDF Page No.	Paragraph	Error	Correction
189	3.12.57	"this matter does not weigh against the Order being made"	"this matter does not weigh against the Order being made <u>and is neutral in the planning balance</u> "
191	3.13.10	"the combined effects on residential living conditions do not weigh significantly against the Proposed Development"	"the combined effects on residential living conditions do not weigh significantly against the Proposed Development <u>and has little negative weight in the planning balance.</u> "
211	5.3.2	"And minor socio-economic benefits"	"and minor socio-economic benefits <u>in terms of employment and GVA</u> "
269	8.2.11	"the extent to which <u>there</u> are relevant is a matter for the SoS to consider."	"the extent to which <u>they</u> are relevant is a matter for the SoS to consider."