

Gate Burton Energy Park

EN010131

Written Summary of the Applicant's Oral Submissions at the Issue Specific Hearing (ISH1) on the Draft Development Consent Order on 5 July 2023
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APFP Regulation 5(2)(q)
Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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1. Introduction

- 1.1.1 The Issue Specific Hearing 1 (“ISH1”) on the draft Development Consent Order [APP-215] (the “Order”) for the Gate Burton Energy Park was held at 10:00am on 5 July 2023 as a blended event, with some parties in attendance at the DoubleTree Hilton, Brayford Wharf North, Lincoln, LN1 1YW and others using the virtual platform of Microsoft Teams.
- 1.1.2 The ISH1 broadly followed the agenda published by the Examining Authority (the “ExA”) on 27 June 2023.
- 1.1.3 The Applicant has updated the Order and Explanatory Memorandum [APP-216] (“EM”) which have both been submitted at Deadline 1.

2. Agenda Item 1 – Welcome, Introductions, Arrangements for the Hearing

2.1 The Examining Authority

- 2.1.1 Kenneth Stone.

2.2 The Examining Authority

- 2.2.1 **Speaking on behalf of the Applicant:** Amy Stirling (Senior Associate Solicitor at Pinsent Masons LLP – the Applicant’s legal advisers for the Application).

2.3 Local authorities

- 2.3.1 **Lincolnshire County Council (LCC):** Stephanie Hall (Counsel) and Neil McBride (Head of Planning).
- 2.3.2 **West Lindsey District Council (WLDC):** Shemuel Sheikh (Counsel), Russell Clarkson (Development Management Team Manager), Alex Blake (Associate Director at Atkins), Finn Heberlet (Senior Planner at Atkins) and Laura Martin (Senior Environmental Consultant at Atkins).
- 2.3.3 **Knaith Parish Council:** David Belton (Chair).

2.4 Other Interested parties

- 2.4.1 **7000 Acres Action Group:** Mark Prior.
- 2.4.2 **The Environment Agency:** Keri Monger (Planning Specialist).

3. Agenda Item 2 – Purpose of the Issue Specific Hearing

- 3.1.1 The ExA briefly explained the purpose of ISH1, including the need to consider the Order as the legal basis for the proposed development. The Applicant did not provide comments against this agenda item.

4. Agenda Item 3 – General Introduction to the Order

4.1 Summary of the structure of the order

- 4.1.1 The ExA invited the Applicant to highlight the key powers sought in the Order and the Applicant's rationale for including the various provisions.
- 4.1.2 Ms Stirling, on behalf of the Applicant, summarised that the Order seeks to grant power to construct, operate, maintain and decommission the Solar and Energy Storage Park (consisting of the solar PV panels, on-site substation and battery energy storage system (“**BESS**”)) and grid connection corridor (including cable works for the connection into the Cottam National Grid substation).
- 4.1.3 The Scheme is ‘authorised development’ as described in **Schedule 1** of the Order, which splits out the various proposed works into different work packages.
- 4.1.4 **Part 2** of the Order sets out the Principal Powers – including granting the Applicant with consent for the authorised development (Article 3), as constrained by the Order limits and numbered areas shown on the Works Plans [**APP-209**]. This ensures that each numbered work within the authorised development (as defined in Schedule 1) must be situated within the corresponding numbered work area on the Works Plans [**APP-209**], which provides appropriate controls and specificity for the powers that are being sought within the redline boundary.
- 4.1.5 Part 2 also authorises the operation of the generating station comprised in the authorised development (Article 4), and maintenance of the authorised development (Article 5).
- 4.1.6 **Part 3** provides a suite of powers in relation to Streets, as required to construct and operate the Scheme. This includes carrying out street works within streets, altering the layout of streets, temporarily stopping up public rights of way, use of private roads, creating accesses, entering into agreements with street authorities and traffic regulation measures (relating to traffic signs and signals, speed limits, direction of traffic, restricting use of a road). These provisions give effect to Schedules 4 to 8.

- 4.1.7 **Part 4** contains supplemental powers, relating to discharge of water, removal of human remains, protective works to buildings and giving the authority to survey and investigate land.
- 4.1.8 **Part 5** deals with Powers of Acquisition. This sets out powers to compulsorily acquire land or rights in land, to extinguish rights in land, or to take temporary possession of land. These articles relate only to the Order land, as shown on the land plans. There are also standard provisions relating to recovery of costs, and powers in relation to land and apparatus of statutory undertakers. These articles give effect to Schedules 10 to 12.
- 4.1.9 **Part 6** contains various Miscellaneous and General provisions, largely to give effect to the Schedules in accordance with model provisions. These cover:
- a) **Article 34** grants the benefit of the Order to the Applicant (Gate Burton Energy Park Limited), and with respect to specific Work No. 4C (electrical engineering works within or around the National Grid Cottam substation), grants the benefit of the Order to the Applicant and National Grid Electricity Transmission plc.
 - b) **Article 35** covers how the powers in the Order can be transferred from those who have the benefit of the Order.
 - c) **Articles 36 and 37** provide for how landlord and tenant law applies in relation to the Order and that the Order will be "operational land" for the purposes of the TCPA 1990.
 - d) **Articles 38 and 39** provide powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Scheme and in relation to trees subject to tree preservation orders (**TPOs**).
 - e) **Articles 40 to 43** include provisions relating to the certification of plans and documents relevant to the Order; no double recovery; arbitration and protection for statutory undertakers through the protective provisions (as set out in Schedule 15).
 - f) **Article 44** gives effect to Schedule 9 which includes the deemed marine licence.
 - g) **Articles 45 to 48** include provisions relating to service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; and the incorporation of the mineral code.
 - h) **Article 49** gives protection in respect of Crown rights.
- 4.1.10 The Order then includes 16 schedules which each identify its operative article in the Order, in the top right corner of the Schedule, including (but not limited to):
- a) **Schedule 1** sets out the works packages for which development consent is being sought. For example, **Work No. 1** is the Nationally Significant Infrastructure Project ("**NSIP**"), being a ground mounted photovoltaic generating station with gross electrical capacity in excess of 50MW. **Work**

Nos. 2 to 9 are associated development, including the BESS (Work No. 2). Further associated development within the Order limits is also listed, including for example works for the provision of fencing and security measures such as CCTV and lighting.

- b) Schedule 2** sets out the requirements that apply to the Scheme (i.e. the controls that apply to the Order). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order.
- c) Schedule 3** provides a list of the local legislation relating to railways, river navigation, fisheries and water that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order.
- d) Schedules 4 to 8** contains various standard schedules in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary traffic regulation measures during construction of the authorised development.
- e) Schedule 9** relates to the deemed marine licence and the works required in relation to the River Trent.
- f) Schedules 10 to 12** sets out the details of land over which the powers of compulsory acquisition of land or rights, to extinguish rights in land, or to take temporary possession of land, apply.
- g) Schedule 13** relates to the documents and plans to be certified by the Secretary of State if the Order is made.
- h) Schedule 14** provides for arbitration rules.
- i) Schedule 15** contains the protective provisions which provide protections for different undertakers and third-party interests, subject to which development consent is granted.
- j) Schedule 16** contains the details of the procedure for the discharge of requirements, in accordance with recent precedent.

Post-hearing submission: the Applicant has added a new Schedule 17 to the updated Order submitted at Deadline 1, to provide details of hedgerows to be removed.

5. Agenda Item 4 – Scope of the Proposed Development

5.1 General capacity

- 5.1.1 The ExA invited the Applicant to explain the generating capacity of the proposed generating station, including what is secured in the Order and highlighting that there is not a cap on generation.

- 5.1.2 Ms Stirling, on behalf of the Applicant, explained that the description of Work No. 1 refers to a gross electrical output capacity of over 50 megawatts (“**MW**”). This is consistent with sections 14 and 15 of the Planning Act 2008 which stipulates that a generating station which exceeds an electrical capacity of 50MW will be an NSIP and therefore development consent will be required.
- 5.1.3 The description of the NSIP at Work No. 1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Scheme will be constrained and it is on this basis that the Environmental Impact Assessment has been undertaken, as set out in the Environmental Statement [**APP-009**] to [**APP-026**] (“**ES**”) and explained further in relation to the ‘consent envelope’.
- 5.1.4 There is no reason to limit the electrical output capacity of the Scheme provided those parameters of the consent envelope are adequately secured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.
- 5.1.5 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Scheme within the assessed parameters but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources, which is explained further in the Statement of Need [**APP-004**].
- 5.1.6 For example, Ms Stirling directed to paragraph 3.10.47 of draft National Policy Statement for Renewable Energy Infrastructure (“**Draft EN-3**”) which states:
- “...installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application.”*
- The Applicant has taken this approach in its Application. Draft EN-3 is capable of being an important and relevant consideration, as confirmed by the Secretary of State in the decision letter for the Longfield Solar Farm Order 2023.
- 5.1.7 The decision to not include a cap is well precedented in solar development consent orders (“**DCOs**”), specifically the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022 and most recently the Longfield Solar Farm Order 2023. It is also precedented in other energy DCOs, including the Hornsea Three Offshore Wind Farm Order 2020, the East Anglia One North Offshore Wind Farm Order 2022, the East Anglia Two Offshore Wind Farm Order 2022. It is a position which has been widely accepted by the Secretary of State.

5.1.8 The ExA queried whether the lower limit of 50MW under the Planning Act 2008 will be achieved by the Scheme.

5.1.9 Ms Stirling confirmed that the anticipated generating capacity of the Scheme is approximately 500MW and that the quantum of infrastructure included in the Application ensures that the 50MW threshold is exceeded.

5.2 BESS as associated development

5.2.1 The ExA invited the Applicant to explain why the BESS is considered to be necessary associated development or whether it is an aim in itself.

5.2.2 Ms Stirling, on behalf of the Applicant, confirmed that the BESS has been included within the design envelope of the Scheme and the maximum capacity of BESS has not been fixed. For the same reasons as described above, there is no benefit to including a cap on capacity of the BESS as the maximum design parameters influence environmental effects, and those are adequately controlled and secured via the Order. By not including a capacity cap, this allows the BESS technology to evolve with the solar PV technology, and for the BESS to contribute to meeting the national need for electricity storage.

5.2.3 However, Appendix 2-A of the Environmental Statement: BESS and Substation Description [APP-113] confirms that the parameters of which consent have been sought are assumed to be equivalent to 500MW/h, which is proportionate to the solar PV electricity generation capacity.

5.2.4 Ms Stirling explained that the purpose of the BESS is two-fold:

1. To provide storage facility for the solar panels during times of high output from the solar PV panels but low demand from the grid. The batteries will be able to store the electricity and provide it to the grid when demand levels increase.
2. To import electricity from the grid at times when grid capacity is high, but demand is low.

5.2.5 The BESS will be located with the solar PV panels and utilise the same grid connection as the solar PV panels which has an import and export capacity. The BESS is therefore intrinsically linked to the solar PV panels, supporting the operation of the solar PV panels but also providing peak balancing services to the grid.

5.2.6 The ExA asked for the Applicant to confirm the time for which electricity will be stored within the BESS.

5.2.7 Ms Stirling responded that the time for which electricity will be stored within the BESS is not specified within the Application. The Applicant agreed to address any of the ExA's concerns in this regard in response to the ExA's first written questions.

5.2.8 The ExA asked to what extent the importation of electricity from the grid to the BESS is necessary.

- 5.2.9 Ms Stirling, on behalf of the Applicant, noted that the appropriate tests for “associated development” are set out within the ‘*Planning Act 2008: associated development applications for major infrastructure projects*’ (DCLG Guidance, April 2013). Whilst the Applicant appreciates that the Secretary of State will decide whether the development should be treated as associated development on a case-by-case basis, the Applicant considers that there is a direct relationship between the associated development and the principal development; the BESS supports the operation of the solar farm and it is not an aim in itself; it is subordinate and provides a secondary function; and is not solely included as an additional source of revenue. As such, the Applicant is confident that the tests are met.
- 5.2.10 Ms Stirling also noted the support for battery storage in draft Overarching National Policy Statement for Energy (“**Draft EN-1**”):
- “3.3.25 Storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated.*
- 3.3.26 Storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher. There is currently around 4GW of electricity storage operational in GB, around 3GW of which is pumped hydro storage and around 1GW is battery storage.*
- 3.3.27 Storage can provide various services, locally and at the national level. These include maximising the usable output from intermittent low carbon generation (e.g. solar and wind), reducing the total amount of generation capacity needed on the system; providing a range of balancing services to the NETSO and Distribution Network Operators (DNOs) to help operate the system; and reducing constraints on the networks, helping to defer or avoid the need for costly network upgrades as demand increases.”*
- 5.2.11 In response to some concerns raised by other interested parties regarding the co-location of the BESS and solar PV panels, Ms Stirling highlighted that the primary function of the BESS is to store solar energy from the solar PV panels. However, the Applicant was offered an import and export connection from National Grid, therefore it is important that the Applicant can make effective use of that connection. The BESS allows the Scheme to provide further important and necessary functions, by utilising the grid balancing services to improve grid stability.
- 5.2.12 The ExA asked the Applicant to explain how the potential for technological increases of the generating capacity would affect the BESS, whether an increase of storage capacity would be required and if so, whether this is reflected within the Order.
- 5.2.13 Ms Stirling, on behalf of the Applicant, explained that the same principles set out at 5.1.3 to 5.1.5 apply. The capacity of the BESS is not sought to be capped but is proportionate to the anticipated generation capacity based on the parameters, which have been assessed and are secured in the Order. The Applicant has based its Application and these design parameters on the basis of current technology and current supply chain, although there is a possibly

that this develops between the Order being granted and the Scheme being constructed. Ultimately if the parameters secured under the Order are found to be acceptable, then increased renewable energy output from the solar PV panels would be of additional benefit. Therefore, there needs to be sufficient flexibility with regards to the BESS, so that the battery storage can remain proportionate to any increased electricity generation.

- 5.2.14 The ExA highlighted that the Secretary of State sought to impose an upper limit on BESS as part of the Little Crow Solar Park application. Ms Stirling acknowledged that was the case but directed the Examining Authority to the more recent decision taken by the Secretary of State in making the Longfield Solar Farm Order 2023 which did not include a generating capacity cap nor a cap on the capacity of the BESS, which also aligns with the Cleve Hill Solar Farm Order 2020. This is the approach that the Applicant has adopted and advocates for.

5.3 Operational lifetime of the Scheme

- 5.3.1 The ExA invited the Applicant to comment on the indicative 60-year life span of the Scheme and whether this time period should be secured within the Order.
- 5.3.2 Ms Stirling, on behalf of the Applicant, confirmed that there is not a maximum time limit specified in the Order and adding such a requirement would be unnecessary. The assumed operational lifetime of the Scheme is 60 years, which is considered a likely worst-case scenario based on the technology and which has been used as a basis for environmental assessment. The operational lifetime of the Scheme will come to an end, however, given the possibilities of technological enhancement, a time limit has not been imposed, to enable ongoing operation to support the National Grid if circumstances prevailing at the time facilitate that.
- 5.3.3 The definition of “maintain” within Article 2 of the Order is also relatively narrow, as it does not allow for wholesale replacement of the Scheme. Specifically, Article 2 states that the Applicant cannot “...remove, reconstruct or replace the whole of” the Scheme. This provides sufficient protection as it ensures that the operation will not continue in perpetuity and decommissioning will occur.
- 5.3.4 In addition, Article 5 only authorises maintenance works to the extent that such works do not give rise to any materially new or materially different effects that have not been assessed in the ES (Article 5(3)). The same restrictions are also found in relation to associated development (Schedule 1) and approved details and amendments to them (Requirement 3(2)), and paragraph 7 of Part 1 of Schedule 9 (Deemed marine licence).
- 5.3.5 Ms Stirling added that an Operational Environmental Management Plan will also be in place for the duration of the scheme, which must be substantially in accordance with the framework operational environmental management plan [APP-225], as secured by Requirement 13. This ensures that the environmental effect and the operation of the scheme are appropriately controlled throughout its lifetime.

Post hearing submission: in considering the oral submissions made by other interested parties including the representatives of LCC, WLDC and 7000 Acres Action Group, regarding the need for a mechanism in the Order to secure a 60-year temporal limit, the Applicant has updated the Order to amend Requirement 19 to ensure that decommissioning must take place no later than 60 years following the date of final commissioning of the authorised development. The Applicant has submitted this updated Order at Deadline 1.

5.4 Decommissioning

- 5.4.1 The ExA invited the Applicant to explain how the Application is consistent with the Rochdale Envelope approach in light of the lack of date of decommissioning with the Order.
- 5.4.2 Ms Stirling, on behalf of the Applicant, reiterated that the Rochdale Envelope requires an assessment of a reasonable worst-case scenario based on a series of assumptions. The lack of specificity of a 60-year time limit is in accordance with these principles given the flexibility required for the nature of this Scheme and the anticipated operational lifetime.
- 5.4.3 Decommissioning is sufficiently secured by Requirement 19 of Schedule 2 of the Order. Prior to decommissioning, the Applicant must submit a decommissioning environmental management plan (“**DEMP**”) to the relevant local planning authority for approval within 12 months of its proposed decommissioning date. The DEMP must be substantially in accordance with the Framework DEMP [**APP-226**] which will be a certified document pursuant to Schedule 13 of the Order.
- 5.4.4 Ms Stirling highlighted that a breach of a requirement of a DCO is an offence pursuant to section 161 of the Planning Act 2008. Therefore, if the Applicant were to decommission the Scheme without preparing, submitting and having the DEMP approved, then this would amount to an offence which is a sufficient deterrent to ensure compliance.
- 5.4.5 However, Ms Stirling acknowledged the ExA's concern that Requirement 19 does not require the Applicant to start decommissioning. The requirement for the DEMP only comes into effect upon the Applicant making a decision to decommission, therefore there would be no breach if there was no decommissioning.

Post hearing submission: as explained at paragraph 5.3.5, the Applicant has updated the Order to amend Requirement 19 to ensure that decommissioning must take place no later than 60 years following the date of final commissioning of the authorised development.

- 5.4.6 The ExA invited the Applicant to comment upon what would happen if the operator of the Scheme went into liquidation and whether or not there would be an appropriate mechanism or sufficient financial security to ensure that the appropriate decommissioning took place.
- 5.4.7 Ms Stirling, on behalf of the Applicant, responded that the Applicant has illustrated that it has sufficient funds in place to deliver the Scheme, as set out

in the Funding Statement [**APP-221**]. Therefore, the Applicant disagrees with the need for a bond or other form of security, which Ms Stirling noted is unprecedented for other energy DCO schemes, and there is no reason or justification to treat the Applicant differently. Ms Stirling flagged again that breach of a DCO requirement is an offence, and that offers sufficient protection for decommissioning.

5.4.8 Ms Stirling also responded to points raised by other interested parties, summarised below:

- a) Ms Hall, on behalf of LCC, raised that the Construction Traffic Management Plan [**APP-167 to APP-168**] does not deal with decommissioning and should mirror the requirements at the construction stage. Ms Stirling reassured that the secured document in relation to decommissioning under Requirement 19 is the DEMP, which must be in accordance with framework DEMP [**APP-226**]. Section 2.6 of the framework DEMP makes provision for traffic management at the point of decommissioning. Therefore, sufficient environmental controls are already place. The Applicant has subsequently received proposed amendments to Requirement 19 from LCC in this regard, which it has incorporated in the Order submitted at Deadline 1.
- b) Ms Hall, on behalf of LCC, also raised concern with the 12-month time period in Requirement 19 as the trigger for the submission of the detailed DEMP to the relevant planning authority. Ms Stirling responded that this time period is longer than the 3-month time period provided in the Longfield Solar Farm Order 2023, which is more beneficial for the local authorities as this requires the Applicant to provide the DEMP further in advance of decommissioning.

6. Agenda Item 5 – Draft Development Consent Order

6.1 Article 2: Interpretation

6.1.1 The ExA sought to test the adequacy of certain common interpretations and asked for the Applicant's perspective on whether some are fit for purpose. Ms Stirling, on behalf of the Applicant, responded to each in turn as set out below.

Environmental Statement

6.1.2 The ExA queried how the Order would reflect any addenda to the ES in the event that material needs to be submitted into the Examination to update, clarify or supplement the ES.

6.1.3 Ms Stirling responded that the relevant definition of 'environmental statement' in Article 2 refers to the document of that name identified in Schedule 13, which is the document to be certified by the Secretary of State as the ES for the purposes of the Order. This would therefore incorporate any updates made

throughout Examination as the final version would be submitted to the Secretary of State post-award of the Order. Schedule 13 could also be updated to specifically refer to the examination references. The Applicant is aware that some recent energy DCOs provide further detail on the definition of an ES, including provision for a separate table where there has been updates to any particular plans or documents.

Post-hearing submission: the Applicant has updated Schedule 13 of the Order, as submitted at Deadline 1, to make it more readily identifiable as to which addenda to the ES may be updated throughout Examination. The approach aligns with the layout in the recently made Hornsea Four Offshore Wind Farm Order 2023.

Maintain

6.1.4 The ExA queried whether the Applicant is relying upon a particular precedent for the definition of “maintain” and noted that the EM does not include any statement of precedent for the definition.

6.1.5 Ms Stirling explained that the definition is precedented, most recently in the Longfield Solar Farm Order 2023, and that EM will be updated for Deadline 1.

Post-hearing submission: the Applicant has updated the EM to include reference to the precedent relied upon for the definition of maintain.

6.1.6 The ExA added that the definition seems particularly broad and whilst there is the exclusion of “...*remove, reconstruct or replace the whole of, the authorised development...*”, this may result in the whole of the Scheme being replaced on a phased basis. The ExA also queried how the definition sits within the framework of the ES which expects a set of equipment replacement in 2046, as set out in Chapter 6 of the ES: Climate Change [APP-015].

6.1.7 Ms Stirling responded by noting that it is important to consider how the definition is used. Whilst Article 5(1) of the Order grants the power to maintain the authorised development, this is subject to Article 5(3), which confirms that Article 5 does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects which have not been assessed in the ES.

6.1.8 Ms Stirling continued that the definition of maintain would allow the replacement of solar PV panels in the manner described and assessed in the ES, which will include the replacement of individual solar PV panels in the manner described. However, this is different from replacing the entire Scheme, including all of the ground mounted infrastructure and the onsite substation. In other words, it is limited to replacement of the solar PV panels and infrastructure assessed in the ES.

Permitted preliminary works

6.1.9 The ExA asked the Applicant to explain the necessity of part (h) of the definition (which includes “*site clearance (including vegetation removal, demolition of existing buildings and structures)*”) and its effect on the operation of Requirement 7 (landscape and ecological management plan).

6.1.10 Ms Stirling, on behalf of the Applicant, confirmed that the operation of the definition of permitted preliminary works means that vegetation removal may be carried out without triggering the requirement to submit a landscape and ecological management plan (“LEMP”). However, the final LEMP to be submitted for the purposes of Requirement 7 must be substantially in accordance with the outline LEMP [APP-231] (the “OLEMP”). Therefore, sufficient information on the intentions of the Applicant with regard to vegetation removal is already available and will be examined.

Post-hearing submission: the Applicant has updated the Order at Deadline 1 to require the OLEMP to be submitted for approval for any site clearance (including vegetation removal, demolition of existing buildings and structures) and advanced planting to allow for an early establishment of protective screening.

6.1.11 In response to a query from Mr Sheikh as to whether applicable regulations still apply to ‘permitted preliminary works’, for example in relation to the displaying of signage, Ms Stirling confirmed that the carrying out of the authorised development (including the permitted preliminary works) will remain subject to any legislative procedures to the extent that they have not otherwise been disapplied by the Order.

Relevant Planning Authority

6.1.12 Ms Stirling, on behalf of the Applicant, confirmed that LCC will be incorporated into the definition of relevant planning authority at Article 2 (Interpretation) and within Schedule 2 (Requirements) when the updated Order is next submitted.

Post-hearing submission: the Applicant has amended the definition of relevant planning authority in Article 2 and Schedule 2 of the updated Order submitted at Deadline 1, in accordance with drafting received from LCC.

Planning Design and Access Statement

6.1.13 The ExA queried whether this should be defined in Article 2 and included within Schedule 13.

6.1.14 Ms Stirling, on behalf of the Applicant, confirmed that the Applicant has not referenced the Planning Design and Access Statement [APP-005] and [APP-006] within the definitions (at Article 2) or list of certified documents (at Schedule 13) because the relevant parameters of the Scheme design are sufficiently secured by Requirement 5 which relates to detailed design approval. Requirement 5(2) requires detailed design which is submitted prior to construction of the authorised development to accord with the Outline Design Principles [APP-007] (“ODPs”). The ODPs are defined within Article 2 and are a certified document for the purposes of Order, whilst the Planning Design and Access Statement is a ‘case making’ document only, to explain how and why relevant policies can be considered to have been complied with and so not appropriate or necessary to secure.

6.2 Article 3: Development Consent etc granted by the Order

6.2.1 The ExA referred to Article 3(2) of the Order and paragraph 2.2.1 of the EM and stated that he was not aware of limits of deviation being shown on the Works Plans [APP-209] and is therefore confused by the reference to limits of deviation in the EM.

6.2.2 Ms Stirling confirmed that the references to limits of deviation within the EM are errata and will be removed from the next version. The Applicant is not seeking limits of deviation within the powers and each numbered work will be situated within each numbered work area shown on the Works Plans [APP-209].

Post-hearing submission: the Applicant has removed the errata reference to 'limits of deviation' in paragraph 2.1.5 and 5.2.7 of the updated EM, submitted at Deadline 1.

6.3 Article 6 – Application and modification of statutory provisions

6.3.1 The ExA identified that Article 6 of the Order seeks to disapply certain statutory provisions. Ms Stirling, on behalf of the Applicant, confirmed that the Applicant has taken on board the comments made by the Environment Agency and will amend the Order as follows:

- a) Remove Article 6(1)(d) which seeks to disapply section 24 (restrictions on abstraction) of the Water Resources Act 1991;
- b) Remove Article 6(1)(e) which seeks to disapply section 25 (restrictions on impounding) of the Water Resources Act 1991; and
- c) Amend Article 6(1)(h) which seeks to disapply Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016, to clarify that the disapplication is sought in respect of flood risk activities only.

Post-hearing submission: the Applicant has updated the Order to reflect the above changes, as submitted at Deadline 1.

6.4 Defence to proceedings in respect of statutory nuisance

6.4.1 Mr Sheikh and Mr Blake, on behalf of WLDC, raised concerns regarding Article 7 seeking to remove statutory nuisance claims brought by local residents.

6.4.2 Ms Stirling, on behalf of the Applicant, explained that the rationale behind Article 7 is to provide a defence to proceedings in respect of statutory nuisance, in relation to noise, in so far as the defendant shows that the nuisance relates to the construction and maintenance of the authorised

development. The purpose of this is to ensure that the Applicant can carry out the works which have been authorised by the Order in accordance with the requirements and other protective mechanisms.

- 6.4.3 The Order is a statutory instrument, a breach of which is an offence. Article 7 is a model provision that ensures that there is no double and potentially competing avenues for noise complaints to be made.

6.5 Articles 38 and 39 Felling or lopping of trees and removal of hedgerows and trees subject to tree preservation orders

- 6.5.1 The ExA indicated that whilst the TPO and Hedgerow Removal Plan [APP-187] provides identification of hedgerows and TPO woodland orders, the Order has no corresponding schedule that refers to it.

- 6.5.2 Ms Stirling confirmed that the Applicant would consider more signposting to ensure clarity of the various documents and requirements.

Post-hearing submission: to clarify, the 'TPO and Hedgerow Removal Plan' is incorrectly named in the Examination Library but is correctly identified as the 'TPO and Hedgerow Plan' in the title block of the figure itself. This plan is not related to vegetation removal, but the purpose is to show TPO trees and important hedgerows within the Order limits.

- 6.5.3 The ExA also queried the extent to which the Applicant's approach complies with PINS Advice Note 15.

- 6.5.4 Ms Stirling, on behalf of the Applicant, noted that the advice note gives two options: (1) make reference to the specific hedgerows with an accompanying schedule; or (2) provide for a general power, subject to later confirmation of the local planning authority. The Applicant has sought to incorporate the second option in the Order, with the general power in Articles 38 and 39 and the required approval secured through Requirement 7 and the submission of the OLEMP. The OLEMP contains various provisions which relate to the felling and lopping of trees and hedgerows and contains various controls about how hedgerow removals will work. For example, paragraph 2.3.19 states:

"...Where an impact to hedgerows is anticipated in the vicinity of the Grid Connection Corridor and site access route from the A156, where possible these existing areas of hedgerow will be coppiced rather than removed to facilitate works..."

- 6.5.5 In addition, the OLEMP secures a Vegetation Removal Plan [APP-093], which sets out the extent of the vegetation removal that will take place within the solar and energy storage park site.

Post-hearing submission: the Applicant has updated the Order at Deadline 1 to make reference to a new Schedule 17, which corresponds to Articles 38 and 39 and sets out details of the specific hedgerows to be removed, by reference to the Vegetation Removal Plan [APP-093] which has been updated at Deadline 1.

6.6 Article 40 – Certification of plans and documents

- 6.6.1 The ExA asked the Applicant whether the Indicative Site Layout Plan [**APP-033**] should be specified in Schedule 13, as the Applicant makes reference in the ODPs, for example in relation to heritage areas, to certain aspects shown graphically on the indicative plan.
- 6.6.2 Ms Stirling, on behalf of the Applicant, confirmed that the Applicant does not consider that it is necessary or appropriate for the Indicative Site Layout Plan to be specified in Schedule 13. The plan intends to be indicative only and shows an approximation of what the site may look like, as the Applicant is instead bound by the ODPs as secured by Requirement 5 (detailed design approval). In any event, as the Indicative Site Layout Plan is a figure accompanying the ES, it would be certified as part of the ES post-award of the Order.
- 6.6.3 Ms Stirling did however confirm that the Applicant would review the ODPs and refer to a more appropriate plan which is more suitably secured.

Post-hearing submission: the Applicant can confirm that the necessary limits of the ODPs are shown in the Works Plans [**APP-209**], as submitted with the Application. For example, Sheet 5 of the Works Plans [**APP-209**] shows the parameters within which the heritage area works (as referenced by the ExA at the ISH1) can be carried out in accordance with the ODPs.

However, to assist further, the Applicant has updated the ODPs at Deadline 1 to add an Environmental Parameters Plan as an Appendix to the ODPs. The focus of this plan is on areas which are excluded (or partially restricted) from the authorised development, as set out in the ODPs. The plan also captures any additional areas referenced in the ODPs (including the heritage buffer zone and the Power Conversion Unit exclusion zone).

- 6.6.4 Ms Stirling also confirmed that it is not necessary to add the Mitigation Schedule [**APP-008**] to the list of documents and plans to be certified. The Mitigation Schedule provides a reference list to the various mitigation measures which are secured along with the relevant securing mechanism. There are no additional commitments within the Mitigation Schedule which are not already secured by another means.
- 6.6.5 Ms Stirling disagreed with the suggestion made by Ms Hall on behalf of LCC that Requirement 8 should refer to the Biodiversity Net Gain Assessment [**APP-230**] instead of the OLEMP. The OLEMP contains a clear commitment for the Applicant to deliver a minimum of 10% biodiversity net gain and secures the ecological and landscaping works to achieve that. Whereas the Biodiversity Net Gain Assessment presents metrics and outputs, based on the relevant Defra metric, which may be subject to change following detailed scheme design.

6.7 Article 49 – Crown Rights

- 6.7.1 The ExA asked the Applicant for an update on the status of reaching agreement with the Crown Commissioners.
- 6.7.2 Ms Stirling, on behalf of the Applicant, confirmed that the Applicant has provided an undertaking to the solicitors acting for the Crown Estate and negotiations are ongoing in relation to the form of consent under section 135 of the Planning Act 2008. The Applicant has the intention to resolve this early into Examination and is confident that it will be able to.

6.8 Schedule 2 - Requirements

- 6.8.1 The ExA invited the Applicant to provide an overview of the Requirements contained in Schedule 2.
- 6.8.2 Ms Stirling set out that the development consent which is being sought in relation to the authorised development included at Schedule 1, is subject to the controls contained in the other Schedules, including Schedule 2.
- 6.8.3 Schedule 2 sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the relevant planning authority or other relevant statutory consultee. They require compliance with framework documents, to be submitted and approved at pertinent points in time.

Requirement 6 – Battery safety management

- 6.8.4 The ExA queried why the Applicant is seeking to require the local planning authority to consult on the details of a Battery Safety Management Plan (“**BSMP**”), which must be substantially in accordance with the Outline Battery Safety Management Plan [APP-222] (“**OBSMP**”), prior to submitting the BSMP for approval.
- 6.8.5 Ms Stirling, on behalf of the Applicant, explained that the drafting of the requirements is standard and mirrors the recently accepted drafting in the Longfield Solar Farm Order 2023. It is commonplace for requirements to require the planning authority to approve various documents in consultation with named specified bodies. This approach ensures views are consulted upon but without the unnecessary risk of preventing the plan from being approved when the local authorities are satisfied. It is sensible to carry out the consultation in advance of submitting the document for final approval, to ensure the final document can incorporate any consultation feedback.
- 6.8.6 The ExA also asked whether consultees should have further control, such as approval. Ms Stirling declined, explaining that the named parties are provided with an opportunity during Examination to participate in the examination of the OBSMP. The approval of requirements is firmly within the statutory remit of the local planning authorities and not with the other named consultees.

Post-hearing submission: the Health and Safety Executive (in writing) and the Environment Agency (orally in ISH1) have confirmed that they do not require to be consultees for Requirement 6. In addition, LCC has requested to be the sole approving authority, as the BESS is located within its administrative boundary. The Applicant has made these requested changes in the updated Order submitted at Deadline 1.

Requirement 9 – Fencing and other means of enclosure

- 6.8.7 The ExA asked the Applicant to clarify the effect of Requirement 9(3) with regards to the relationship between 'commence' and 'permitted preliminary works' as a trigger for when the Requirement would become operational.
- 6.8.8 Ms Stirling, on behalf of the Applicant, explained that the definition of commence for the purposes of Requirement 9(3) includes permitted preliminary works to ensure that appropriate measures are agreed before the permitted preliminary works may be carried out. This imposes additional controls on the Applicant when putting any required fencing in place.

Requirement 11 – Archaeology

- 6.8.9 As LCC and WLDC confirmed that this Requirement is sufficient, the Applicant did not propose any changes.
- 6.8.10 The ExA raised that the Archaeological Mitigation Strategy [APP-227] ("AMS") is split into two parts, with Part 1 in the main body and Part 2 appended to that document. Ms Stirling confirmed that the Applicant will review whether further clarity can be provided to ensure the appropriate documents are secured.

Post-hearing submission: the Applicant has updated the Order at Deadline 1 to update the list of documents and plans to be certified at Schedule 13 to include both Part 1 and Part 2 of the AMS. The Applicant has also added a definition of AMS into Article 2, which is defined by reference to Schedule 13.

6.9 Schedule 9 and Article 44 – Deemed Marine Management Organisation (MMO) licence

- 6.9.1 The ExA asked for an update and clarification of discussions, following the MMO requesting to be registered as an interested party.
- 6.9.2 Ms Stirling, on behalf of the Applicant, confirmed that Article 44 constitutes deemed consent (as provided for under section 149A of the Planning Act 2008) under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 9 sets out the terms on which the deemed marine licence would be granted. The overall structure of this licence reflects that found in Schedule 8 of the Cleve Hill Solar Park Order 2020.
- 6.9.3 The principle of including the deemed marine licence was discussed with the MMO on a call between the Applicant, Pinsent Masons and the MMO on Monday 19th June. So far as the Applicant is aware the MMO has no concerns with the proposed approach, although the Applicant is awaiting comments on the drafting.

- 6.9.4 Ms Stirling explained that the Applicant is hopeful that the matter would be resolved soon, but if not by Deadline 2, then the Applicant will be willing to revisit the requirement for a Statement of Common Ground.

Post-hearing submission: The Applicant is aware of a subsequent submission by the MMO in relation to the requirement for the deemed marine licence, or reliance on an exemption. The Applicant had a call with the MMO on 13th July 2023 to discuss this submission and the proposed approach to the DML and potential routes forward. The MMO and the Applicant agreed to work together and will respond substantively at Deadline 2.

6.10 Schedule 15 - Protective provisions

- 6.10.1 The ExA asked the Applicant for an update on the progress being made between the Applicant and other parties regarding protective provisions.

- 6.10.2 Ms Stirling, on behalf of the Applicant, summarised that there has been good progress across the board. The Applicant will submit a detailed tracker at Deadline 1.

Post-hearing submission: The latest status of negotiations on protective provisions is found in the updated Schedule of Negotiations and Powers Sought submitted at Deadline 1.

- 6.10.3 In terms of the Canal and Rivers Trust, the Applicant confirmed it had received draft protective provisions and has agreed to include these within the Order subject to proposed amendments. The Applicant confirmed that an all-parties meeting was arranged for Friday 14 July with the Canal and Rivers Trust plus the developers of Cottam Solar Project, West Burton Solar Project and Tillbridge Solar Project to ensure they are all aligned.

Post-hearing submission: the all-parties meeting took place on 14 July 2023 to discuss the protective provisions. The Applicant has inserted a placeholder for draft protective provisions for the benefit of the Canal & River Trust at Part 11 of Schedule 15 of the updated Order submitted at Deadline 1, which it expects to update with agreed protective provisions early in Examination.

- 6.10.4 In terms of Tillbridge Solar Project Limited, Ms Stirling stated that no application for Tillbridge Solar Project has been submitted yet. However, it is expected that protective provisions will be included in the Order for the protection of Tillbridge Solar Project Limited and the Applicant is expecting reciprocal protective provisions in the draft DCO for Tillbridge Solar Project in favour of the Applicant. Once the Tillbridge Solar Project DCO application has been made, and the proposed order limits are clear (particularly the interface with the Gate Burton Energy Park), the Applicant will update the Order.

Post hearing submission: The interrelationships report submitted at Deadline 1 confirms this position. Specifically, Clause 5.5 of the commercial agreement appended to that report confirms that protective provisions will be included within the Order at the appropriate time, on substantially the same terms as those currently included in the Order for the benefit of Cottam Solar Project Limited and West Burton Solar Project Limited.

6.11 Schedule 16 – Procedure for discharge of requirements

- 6.11.1 The ExA asked for the Applicant's view on the proposed approach to the discharge of requirements including timescales for consultation, or for managing appeals or disputes under the Order.
- 6.11.2 Ms Stirling, on behalf of the Applicant, explained that the approach taken has been well preceded by a number of recent DCOs to date and it is sufficiently clear. This includes an obligation on the local planning authorities to engage in consultation with the listed consultees. The purpose and intent of Schedule 16 is to ensure that the development can proceed within reasonable time frames, which is necessary given that the Scheme is an NSIP and it is in the public interest to do so.
- 6.11.3 The Applicant is monitoring other DCO applications currently in the system to provide additional clarity and comfort, including the Mallard Pass Solar Project DCO, where there has been some recent updates to these provisions.
- 6.11.4 Ms Stirling, on behalf of the Applicant, also confirmed that the following points raised by Ms Hall and Mr Sheikh on behalf of LCC and WLDC respectively, will be considered:
- a) The time limit for determination as a trigger for deemed discharge;
 - b) Which requirements deemed discharge, as set out in paragraph 2(2) of Schedule 16, shall apply to;
 - c) The time period in relation to consultation requirements on the Councils, for example adding in a time limit for the consultees to respond in;
 - d) Whether LCC should be the approving authority for Requirement 6 and other Requirements;
 - e) Requirements to include retention or implementations clauses; and
 - f) Fees to be included in Schedule 16.

Post-hearing submission: the Applicant has amended Schedule 16 in the updated Order submitted at Deadline 1 in light of the points raised. For example, the Applicant has extended the determination period from six weeks to eight weeks in line with the Cleve Hill Solar Park Order 2020 and the Little Crow Solar Park Order 2022. The Applicant will continue to engage with the local authorities and incorporate any changes it considers appropriate in further updated versions of the Order to be submitted at later deadlines.

7. Agenda Item 6 – Review of Issues and Actions Arising

- 7.1.1 None.

8. Agenda Item 7 – Any Other Business

8.1.1 None.