

Gate Burton Energy Park

EN010131

Written Summary of the Applicant's Oral Submissions at the Compulsory Acquisition Hearing (CAH1) on
22 August 2023

Document Reference: EN010131/APP/8.13a

September 2023

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Prepared for:

Gate Burton Energy Park Limited

Prepared by:

AECOM Limited

© 2023 AECOM Limited. All Rights Reserved.

This document has been prepared by AECOM Limited ("AECOM") for sole use of our client (the "Client") in accordance with generally accepted consultancy principles, the budget for fees and the terms of reference agreed between AECOM and the Client. Any information provided by third parties and referred to herein has not been checked or verified by AECOM, unless otherwise expressly stated in the document. No third party may rely upon this document without the prior and express written agreement of AECOM.

Table of Contents

1.	Introduction.....	4
2.	Agenda Item 1 – Welcome, Introductions, Arrangements for the Hearing	4
2.1	The Examining Authority.....	4
2.2	The Applicant.....	4
2.3	Local authorities.....	4
2.4	Other Interested parties	4
3.	Agenda Item 2 – Purpose of CAH1 and the ExA's opening remarks	5
4.	Agenda Item 3 – Summary of DCO provisions	5
4.1	DCO Articles engaging Compulsory Acquisition (CA) and Temporary Possession (TP) powers.....	5
4.2	Other provisions in the draft DCO relating to CA and TP	7
4.3	Article 1 of the First Protocol to the European Convention on Human Rights (ECHR)	8
4.4	Article 6 of the ECHR.....	8
4.5	Article 8 of the ECHR.....	9
4.6	Duties under the Equality Act 2010	9
5.	Agenda Item 4 – The Applicant's Strategic Case for CA and TP	10
5.1	Request for CA in accordance with s123(2) of the Planning Act 2008	10
5.2	Purposes for which the CA powers are sought in compliance with section 122(2) of the Planning Act 2008	10
5.3	Alternatives	10
5.4	Necessary and proportionate.....	11
5.5	Compelling case in the public interest CA in accordance with s122(3) of the Planning Act 2008	11
5.6	Further discussion	12
6.	Agenda Item 5 – Crown land and special category land.....	14
6.1	Update on obtaining section 135 consent for the Crown land.....	14
6.2	Key milestones towards reaching agreement	15
6.3	Likelihood and implications of agreement not being reached	15
6.4	National Trust land or Commons (including town or village greens) open space or fuel or field garden allotments.....	15
7.	Agenda Item 6 – Statutory Undertakers	16
7.1	Representations under section 127 Planning Act 2008	16
7.2	Application of section 138 Planning Act 2008	16
7.3	Protective provisions update.....	16
8.	Agenda Item 7 – Review of Schedule of Negotiations and Powers Sought...	19
9.	Agenda Item 8 – Funding	20
10.	Agenda Item 9 – Individual Objections to CA and TP for each affected person	21
10.1	Mr Christopher Ash	21
10.2	Mr Nicholas Hill and Ms Emma Hill.....	22
11.	Agenda Item 10 – Review of issues and actions arising.....	23
12.	Agenda Item 11 – Any Other Matters.....	23
13.	Agenda Item 12 – Close	23

1. Introduction

- 1.1.1 The Compulsory Acquisition Hearing 1 (“**CAH1**”) for the Gate Burton Energy Park was held at 10:00am on 22 August 2023 as a blended event, with some parties in attendance at the Riseholme College, Showground Campus, Horncastle Lane, North Carlton, LN1 2ZR and others using the virtual platform of Microsoft Teams.
- 1.1.2 The CAH1 broadly followed the agenda published by the Examining Authority (the “**ExA**”) on 15 August 2023.

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

2.1 The Examining Authority

- 2.1.1 Kenneth Stone.

2.2 The Applicant

- 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) and James Dewey (Director, Head of Compulsory Purchase, Gateley Hamer).

2.3 Local authorities

- 2.3.1 None.

2.4 Other Interested parties

- 2.4.1 **Christopher Ash** (affected person): representing himself.
- 2.4.2 **Nicholas Hill and Emma Hill** (affected persons): Elizabeth Garbutt, speaking on Mr Hill’s and Ms Hill’s behalf.
- 2.4.3 **7000 Acres Action Group:** Ms Garbutt.

3. Agenda Item 2 – Purpose of CAH1 and the ExA's opening remarks

- 3.1.1 The ExA briefly explained the purpose of CAH1, including to enable the ExA to examine the Applicant's strategic case, and whether the relevant legal tests, policy and guidance have been addressed. The Applicant did not provide comments against this agenda item.

4. Agenda Item 3 – Summary of DCO provisions

4.1 DCO Articles engaging Compulsory Acquisition (CA) and Temporary Possession (TP) powers

- 4.1.1 Ms Stirling, on behalf of the Applicant, summarised that Part 5 of the draft DCO contains the main provisions for compulsory purchase. Ms Stirling briefly ran through each of the relevant articles in turn, which are summarised below.

Articles

- 4.1.2 **Article 20** (Compulsory acquisition of land) authorises the CA of the Order land (being the land described in the Book of Reference [AS-012] and shown on the Land Plans [AS-010] and [AS-011]). The power in Article 20 is subject to Article 22 relating to the acquisition of rights, and Article 29 relating to TP.
- 4.1.3 **Article 21** (Time limit for exercise of authority to acquire land compulsorily) sets the time limit for the exercise of CA powers and provides that the powers cannot be exercised after a period of five years from the making of the Order.
- 4.1.4 **Article 22** (Compulsory acquisition of rights) authorises the CA of permanent rights in the Order land. This applies to all land subject to freehold acquisition, and to the land specified in Schedule 10 of the draft DCO [REP2-027]. In relation to the land specified in Schedule 10, the powers are limited to the rights specified in that schedule, namely cable rights, access rights and/or services rights.
- 4.1.5 Article 22 also gives effect to Schedule 11, which modifies existing CA provisions so that it applies to the acquisition of a right over land as well as acquisition of land. The article also authorises only the acquisition of the rights specified in that schedule. Article 22(3) removes the requirement for the undertaker to acquire a more substantial right than it needs. It also permits the transfer of the rights to a statutory undertaker with Secretary of State consent if, for example, land must be acquired to move apparatus.
- 4.1.6 **Article 23** (Private rights) deals with existing private rights and provides for their extinguishment or suspension depending on the nature of the CA by the Applicant. This is to ensure any inconsistent third-party rights do not prejudice

the delivery of the Scheme, subject to the payment of compensation. The article does not apply to statutory undertaker land and can be modified by agreement with the relevant land interest.

- 4.1.7 **Article 24** (Application of the 1981 Act) applies the Compulsory Purchase (Vesting Declarations) Act 1981 as if the DCO were a compulsory purchase order, subject to certain modifications to ensure terms are workable within the Planning Act 2008 regime. This enables the undertaker to acquire the land interests via a general vesting declaration.
- 4.1.8 **Article 25** (Acquisition of subsoil only) permits the acquisition of subsoil only. For example, for a permanent easement of a cable, without the need for the undertaker to acquire the remainder of the land.
- 4.1.9 **Article 26** (Power to override easements and other rights) permits the undertaker to carry out the authorised development (whether using powers of CA or not) notwithstanding that it would interfere with third party rights, subject to payment of compensation.
- 4.1.10 **Article 27** (Modification of Part 1 of the Compulsory Purchase Act 1965) modifies the Compulsory Purchase Act 1965 so that the terms and references work with the terms of the Order.
- 4.1.11 **Article 28** (Rights under or over streets) allows the undertaker to enter, appropriate and use the subsoil of or airspace over any street within the Order limits for the purposes of the authorised development, subject to the payment of compensation.
- 4.1.12 **Article 29** (Temporary use of land for constructing the authorised development) permits the temporary use of land. There are certain plots of land specified in Schedule 12 in respect of which only TP may be taken. Otherwise, the undertaker can enter onto any of the Order land before the CA powers have been exercised. The entry is subject to 14 days' notification. If the undertaker takes entry onto land under this article, the power of TP is limited to 1 year after final commissioning of the Scheme unless CA powers are exercised. The article also requires reinstatement of land, subject to certain exclusions. All powers are subject to the payment of compensation.
- 4.1.13 **Article 30** (Temporary use of land for maintaining the authorised development) permits the temporary use of land for maintaining the authorised development, subject to notice and only remaining on the land so long as is reasonably necessary. Subject also to payment of compensation. This only applies during the maintenance period which is five years from date of final commissioning, except where any longer maintenance period for landscaping works is required by the outline Landscape and Ecology Management Plan [REP2-037].
- 4.1.14 **Article 31** (Statutory undertakers) permits the acquisition of land and rights in statutory undertaker land, subject always to the protective provisions at Schedule 15.

- 4.1.15 **Article 32** (Apparatus and rights of statutory undertakers in stopped up streets) maintains the rights of statutory undertakers in streets subject to street works.
- 4.1.16 **Article 33** (Recovery of costs of new connections) makes provision for third parties to recover costs where their utilities supply has been interrupted due to works carried out by the undertaker.

Schedules

- 4.1.17 **Schedule 10**, as referred to in Article 22 and 29, specifies the land in respect of which only rights may be acquired and the extent of those rights split into categories of access rights, cable rights and services rights.
- 4.1.18 **Schedule 11**, as referred to in Article 22, modifies compulsory purchase legislation to ensure it is workable in the context of CA under the Planning Act 2008.
- 4.1.19 **Schedule 12**, as referred to in Article 29, specifies the land in which only TP can be taken.
- 4.1.20 **Schedule 15**, as referred to in Article 31 and 32, contains protective provisions for the benefit of various parties which operate as a restriction on the CA powers therein.
- 4.1.21 In response to a query raised by Mr Christopher Ash, Ms Stirling confirmed that the Applicant is not seeking to acquire any residential properties as part of the Scheme (through CA or otherwise). This is confirmed in the Applicant's response to Q.1.5.12 of the ExA's First Written Questions [REP2-041].

4.2 Other provisions in the draft DCO relating to CA and TP

- 4.2.1 Ms Stirling, on behalf of the Applicant, explained that the draft DCO contains other relevant powers for the purposes of CA and TP. This includes Part 3, which make provision for the carrying out of street works; and Part 4, which contains supplemental powers. Ms Stirling referred to the articles summarised below as having particular relevance to CAH1.
- 4.2.2 **Article 18** (Protective works to buildings) enables the undertaker to carry out protective works to buildings to either prevent or remedy damage from the Scheme, subject to payment of compensation.
- 4.2.3 **Article 29** (Temporary use of land for constructing the authorised development) grants the undertaker the authority to survey and investigate land with 14 days' notice, again subject to payment of compensation.
- 4.2.4 **Article 47** (Guarantees in respect of payment of compensation) restricts the undertaker from exercising the powers conferred under Articles 20, 22, 23, 28, 29, 30 and 31 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.

- 4.2.5 **Article 48** (Compulsory acquisition of land – incorporation of the mineral code) incorporates the minerals code as mineral rights have been identified within the Order land and the mineral code provides a statutory process for dealing with the purchase of and compensation for minerals.
- 4.2.6 **Article 49** (Crown Rights) provides that the Order does not allow the undertaker to interfere with Crown rights other than with consent of the relevant Crown body.

4.3 Article 1 of the First Protocol to the European Convention on Human Rights (ECHR)

- 4.3.1 Ms Stirling explained that Article 1 of the First Protocol of the ECHR protects the rights to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest. The ECHR was incorporated into UK law by the Human Rights Act 1998.
- 4.3.2 If granted, the Order could infringe rights of affected persons, however the infringement is authorised by law if:
- (a) The statutory procedures for making the Order are followed and there is a compelling case in the public interest for the inclusion of the powers of CA in the Order;
 - (b) The interference is proportionate.
- 4.3.3 Ms Stirling confirmed that the Applicant considers that these tests are met, as the Planning Act 2008 process has and will continue to be followed.
- 4.3.4 There is a compelling case for the Gate Burton scheme to proceed, which is in the public interest. This is supported by the Statement of Need [APP-004] which sets out the need for the delivery of a substantial quantum of renewable energy to the national grid.
- 4.3.5 The Applicant has also minimised the land which is required through design as demonstrated in the Chapter 3 of the ES: Alternatives and Design Evolution [APP-012] and has sought voluntary agreements for all Order land. Nevertheless, the Applicant requires powers of CA to ensure the Scheme can be built and operated. The Applicant's position is that the balance of public interest in favour of the Scheme and outweighs any effects on individual land interests. Where such effects do occur, compensation mechanisms are in place in accordance with a well-established compensation code.
- 4.3.6 Overall, therefore, Ms Stirling submitted that the relevant provisions of the First Protocol are satisfied.

4.4 Article 6 of the ECHR

- 4.4.1 Ms Stirling, on behalf of the Applicant, explained that Article 6 of the ECHR entitles those affected by CA to be heard at a fair and public hearing.

- 4.4.2 The Planning Act 2008 provides multiple opportunities for engagement by affected persons, including pre-application statutory consultation, the section 56 acceptance process, this CAH1 and written submissions into Examination.
- 4.4.3 Any challenge to the grant of the Order can also be made to the High Court.
- 4.4.4 Overall, therefore, Ms Stirling submitted that the provisions of Article 6 are satisfied.

4.5 Article 8 of the ECHR

- 4.5.1 Ms Stirling summarised that Article 8 of the ECHR protects private and family life. Interference is justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country and for the protection of health.
- 4.5.2 No dwelling houses are subject to CA and the Applicant therefore does not consider that this Article is engaged. If it is engaged however, then it is considered justified as all compulsory powers are in accordance with law and in the public interest.

4.6 Duties under the Equality Act 2010

- 4.6.1 Ms Stirling explained that whilst the Applicant is not a public sector body specified in the Equality Act 2010 as being subject to the Public Sector Equality Duty (“**PSED**”), section 149(2) of the Act provides that a “*person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard*” to the PSED.
- 4.6.2 The Scheme constitutes a Nationally Significant Infrastructure Project (“**NSIP**”) and therefore requires an application for a DCO to be submitted to the Planning Inspectorate, for determination by the Secretary of State. The Secretary of State is a public authority to which the PSED applies, as prescribed in Schedule 18 of the Equality Act 2010.
- 4.6.3 An Equalities Impact Assessment is under preparation and is being submitted following the Examining Authority’s written questions for Examination Deadline 3.

Post-hearing submission: The Applicant has submitted the Equalities Impact Assessment at Deadline 3.

- 4.6.4 The Equalities Impact Assessment will assist the Secretary of State’s decision-making process by demonstrating that due regard has been paid to the needs of protected characteristic groups in line with the Equality Act 2010 and the PSED. Demonstration of due regard is provided through the assessment of potential impacts of the Scheme on protected characteristic groups, which is informed by policy and legislation review, an overview of the Scheme, equalities baseline as well as consultation activities. The Equalities Impact Assessment concludes that the Applicant has had due regard to the PSED in accordance with the 2010 Act.

- 4.6.5 In response to a query raised by the ExA, Ms Stirling confirmed that the Applicant is not aware of any specific cases where there has been interference of human rights that needs to be brought to ExA's attention for the purposes of the Scheme.

5. Agenda Item 4 – The Applicant's Strategic Case for CA and TP

5.1 Request for CA in accordance with s123(2) of the Planning Act 2008

- 5.1.1 Ms Stirling, on behalf of the Applicant, confirmed that the application includes a request for CA in accordance with section 123(2) of the Planning Act 2008.
- 5.1.2 The application includes a request for the CA of land and rights in land, to the extent set out in Section 5 (Source and Scope of Powers Sought in the DCO) of the Statement of Reasons [APP-218]. This was confirmed in section 1.7 of the Cover Letter [APP-001] which accompanied the application and is supported by the Book of Reference [AS-012] and the Land Plans [AS-010] and [AS-011].

5.2 Purposes for which the CA powers are sought in compliance with section 122(2) of the Planning Act 2008

- 5.2.1 Ms Stirling, on behalf of the Applicant, set out that all powers sought are required for the authorised development, being the Gate Burton Energy and Storage Park scheme, or are to facilitate or are incidental to that development. In other words, the necessary tests under section 122(a) and section 122(b) apply. Section 122(c) is not engaged because there is no special category land forming part of the Scheme.
- 5.2.2 The land over which powers are sought is required for the development and is no more than is reasonably required for those purposes. That is demonstrated via the Statement of Reasons [APP-218], specifically Section 7.2 on the use and quantum of the Order land.

5.3 Alternatives

- 5.3.1 Ms Stirling, on behalf of the Applicant, confirmed that all reasonable alternatives to CA and TP have been explored. The Applicant has sought the rights it needs to deliver the Scheme via voluntary negotiations and has entered into Option agreements for the Solar and Energy Storage Park site and is well advanced in negotiations on the Grid Connection Corridor. Voluntarily negotiations for Option agreements for rights over the remainder of the Grid Connection Corridor remain ongoing.

5.3.2 Further details on alternatives are contained at Section 7.6 of the Statement of Reasons [APP-218] and in Chapter 3 of the ES: Alternatives and Design Evolution [APP-012]. Details on site selection are at section 7.7 of the Statement of Reasons. The Applicant considers that all reasonable alternatives have been considered prior to the making of the Application at relevant stages, including technical feasibility and minimising environmental impacts.

5.4 Necessary and proportionate

5.4.1 Ms Stirling, on behalf of the Applicant, explained that the land and rights sought are proportionate to deliver the Scheme. The Applicant has sought powers of CA of land where it intends to occupy or otherwise control the land for the duration of the operational period, which is considered proportionate to the interference, although the Applicant's firm intention is to rely on its voluntary property agreements for this land. The Applicant has sought permanent rights for its cable within the Grid Connection Corridor and has identified some areas of land where only some TP is required. Temporary possession powers are proportionate, they are a lesser interference to CA and can result in less land take overall.

5.4.2 Notwithstanding where an agreement has been reached, it is necessary for the Applicant to be granted the CA powers included in the DCO so as to protect against a scenario whereby contracts are not adhered to or otherwise is set aside, for example: (i) the freeholder owners of the land within the Order land (where agreement has been reached) do not grant a lease of the land in accordance with the terms of the completed Option agreements; or (ii) the contracting party dies, is subject to divorce proceedings, or is declared insolvent. In those circumstances, it would be in the public interest for the Scheme to proceed. The Applicant also needs the powers to extinguish and/or suspend rights and override easements and other rights in the Order land to the extent that they would conflict with the Scheme to ensure its delivery.

5.5 Compelling case in the public interest CA in accordance with s122(3) of the Planning Act 2008

5.5.1 Ms Stirling, on behalf of the Applicant, explained that the public interest in the Scheme is two-fold: (1) decarbonisation; and (2) security of supply. Achieving decarbonisation is a UK legal requirement and is of national and global significance. The UK Government is committed to large scale solar as a matter of policy to deliver both public interests.

5.5.2 The Scheme will deliver large amounts of low carbon electricity to the national grid whilst providing an efficient opportunity to integrate energy storage with large scale generation. This provides essential grid balancing services and energy security. Solar is critical in the path to net zero and receives the highest policy support in existing and emerging Government policies. The Scheme will provide secure and affordable, low carbon generation.

- 5.5.3 The Planning, Design and Access Statement [REP2-004] and [REP2-006] demonstrates that the Scheme is supported by planning policy, whilst the Statement of Need [APP-004] demonstrates that the need for the Scheme is satisfied.
- 5.5.4 Compulsory acquisition powers are required to ensure that the Scheme can be build, operated and maintained so that the Government policy and policy interests can be delivered within the timescales required. In the absence of these CA powers, the Scheme may not be possible to assemble all necessary land and the objectives of policy would not be achieved. There is therefore a compelling case in the public interest for the use of CA powers, which outweigh any private loss. Any private loss would also be compensated in accordance with the established code.
- 5.5.5 Katrina Morton, a member of the public, asked the Applicant to clarify what legislation provides that the planning policy referred to by the Applicant is required as part of the Scheme.
- 5.5.6 Ms Stirling, on behalf of the Applicant, explained that the Planning Act 2008 sets the thresholds for NSIPs as being onshore generating stations of more than 50MW (in accordance with section 15(2)), which includes solar. This therefore includes the Scheme. Sections 104 and 105 of the Planning Act 2008 then provides that the Secretary of State must have regard to 'important and relevant matters' in deciding applicable applications. Ms Stirling referred to draft National Policy Statement for Renewable Energy Infrastructure (EN-3) which is capable of being an important and relevant consideration for solar NSIPs in advance of formal designation, and this policy document provides the highest form of policy support for solar.

5.6 Further discussion

- 5.6.1 The ExA indicated that much of the solar park area is being progressed subject to private agreements, and queried whether CA powers are still required in the event that these agreements are successful.
- 5.6.2 Ms Stirling, on behalf of the Applicant, emphasised that the Applicant's firm intention is to rely on voluntary property agreements. Having said that, notwithstanding where an agreement has been reached, it is necessary for the Applicant to be granted the CA powers included in the DCO so as to protect against a scenario whereby the contracts are not adhered to or otherwise is set aside, for example: (i) the freeholder owners of the land within the Order land (where agreement has been reached) do not grant a lease of the land in accordance with the terms of the completed option agreements; or (ii) the contracting party dies, is subject to divorce proceedings, or is declared insolvent. The Applicant needs powers to extinguish and/or suspend rights and override easements and other rights in the Order land to the extent that they would conflict with the Scheme to ensure its urgent delivery.
- 5.6.3 The ExA also queried whether it is appropriate for CA to be sought in perpetuity, when the Scheme is curtailed to 60 years.

- 5.6.4 Ms Stirling responded that CA of the freehold is more proportionate than permanent rights in this instance because it would entitle the landowner to proportionate compensation and would avoid the landowner from effectively being excluded from the land for the 60-year period. Ms Stirling distinguished the solar site and the grid connection corridor. As the Applicant does not require exclusive use of the grid connection corridor, it is considered more appropriate for powers to acquire permanent rights only rather than freehold acquisition. However, where the solar site is required to the exclusion of the landowner, permanent CA powers are considered more appropriate.
- 5.6.5 The ExA also asked what mechanism is in place to ensure that the land is returned to its previous use at the end of the Scheme lifetime, if such land has been acquired by CA.
- 5.6.6 Ms Stirling, on behalf of the Applicant, confirmed that the Applicant has entered into Option for Lease agreements for the Solar and Energy Storage Park site. These Option agreements make provision for the exercise of CA powers and provide that if the Applicant acquires a freehold interest in the land using CA (e.g. following a landowner default), the Applicant must nevertheless transfer the land back to the relevant landowner (or its successor in title) on decommissioning.
- 5.6.7 The land would therefore be transferred back to the landowner (or its successor in title) in its decommissioned arable form (i.e. when all solar PV panels and other infrastructure have been removed in accordance with the Framework DEMP [APP-266] secured via Requirement 19 of the draft DCO, and the Outline Soil Management Plan [REP-030] secured via Requirement 17 of the draft DCO). The original land use would therefore be reinstated, aside potentially from the limited exceptions of the on-site substation, BESS and some mitigation planting which have been assumed to be permanent as a worst-case scenario for land use change (which has been factored into the environmental assessments). Ms Stirling also noted that the Applicant would also as a matter of best practice follow Crichel Down Rules, which is Government guidance requiring surplus land to be offered back to the former owner or the former owner's successors at the current market value.
- Post-hearing submission:** The Applicant can confirm that as is standard practice and in accordance with the principles of the Crichel Down Rules, the terms of the option agreements for the Solar and Energy Storage Park Site provide that where the Applicant has compulsorily acquired any freehold interest in the property notwithstanding that it is currently under option (e.g. in the event of a landowner default), the Applicant shall nevertheless transfer the freehold back to the landowner or its successor in title on decommissioning.
- 5.6.8 In relation to Knaith Park (plots 2/1 and 2/2), the ExA questioned why the land is required to be subject to CA. The ExA queried whether the plots could be excluded from the development site on the basis that the Landscape and Ecology Management Plan [REP2-037] indicates that the land is an agricultural field in a solar panel exclusion zone.

5.6.9 Ms Stirling, on behalf of the Applicant, confirmed that the land is within the solar PV exclusion zone and would review its role as a mitigation buffer in the Examination documents.

Post-hearing submissions: The Applicant is considering the rights sought for Knaith Park in further detail and will provide a further update at Deadline 4 including, if required, an update to the environmental parameters plan.

5.6.10 Ms Stirling also confirmed that the reference(s) to Work No. 1 for plots 2/1 and 2/2 in the Schedule of Negotiations and Powers Sought [REP2-031] are errata. This has been corrected in the update provided at Deadline 3.

6. Agenda Item 5 – Crown land and special category land

6.1 Update on obtaining section 135 consent for the Crown land

6.1.1 The ExA asked for an update on the Applicant's discussions with The Crown Estate in relation to obtaining its consent under section 135 of the Planning Act 2008 for the inclusion of Crown land.

6.1.2 Ms Stirling, on behalf of the Applicant, explained that as set out in Part 4 of the Book of Reference [AS-012], in relation to Crown Land interests, the undertaker is seeking new rights at Plot 13/04 to be acquired permanently over approximately 14255 square metres of bed and banks of River Trent (Trent Port, Marton). This relevant plot is shown at Sheet 13 of the Crown Land Plans [APP-214].

6.1.3 The Crown Estate is the freehold owner of the river bed and banks of the River Trent, with the Canal & River Trust having the leasehold interest. As set at Schedule 10 of the DCO, the new rights over plot 13/4 are required in respect of "cable rights" only. The DCO includes the standard article providing that the Order does not prejudicially affect any estate (etc.) of the Crown, and that the undertaker may not enter on or take any Crown land other than with the consent of the appropriate authority (Article 49). The provisions permitting powers of CA specifically provides that it is subject to Article 49.

6.1.4 Ms Stirling updated that the Applicant is engaged with solicitors acting for The Crown Estate in relation to obtaining necessary Crown consents pursuant to sections 135(1) and (2) and is confident that these will be obtained during the course of Examination. A joint statement was submitted on 21 August 2023 confirming that:

"It is understood that the agenda item refers to consent pursuant to section 135 of the Planning Act 2008 which provides that an order granting development consent may only include (1) provision authorising the compulsory acquisition of Crown land if it is an interest which is for the time being held otherwise than by or on behalf of the Crown if the appropriate

Crown authority consents to the acquisition and (2) any other provision applying in relation to Crown land, or rights benefiting the Crown, if the appropriate Crown authority consents to inclusion of the provision.

The Applicant is engaged with solicitors acting for The Crown Estate Commissioners in relation to obtaining the necessary Crown consents pursuant to s135(1) and (2). The Applicant set out the nature of the consent sought in the response to FWQ Q1.5.3. The Crown Estate Commissioners are currently reviewing the request for s135(1) consent in respect of the compulsory acquisition of third-party interests in Plot 13/4 and the request for s135(2) consent in respect of the proposed application of certain articles in the draft DCO in relation to Crown land.

The Crown Estate Commissioners note that the Examination is in the early stages and, in relation to section 135(2) consent in particular, the articles in the draft DCO are liable to change as the Examination progresses. For this reason, they note that it is prudent for any consent to be granted at a later stage in the Examination once the draft DCO is in close to final form; the ExA will be aware that this is ordinarily the case.

The parties will aim to reach agreement in a timely fashion and before the close of the Examination. This statement has been agreed by both parties."

6.2 Key milestones towards reaching agreement

- 6.2.1 Ms Stirling confirmed the Applicant has asked The Crown Estate to confirm a timetable of identifying key milestones towards reaching agreement as the Applicant's position is that the matter is capable of resolution now, whilst The Crown Estate's position is set out above.
- 6.2.2 Ms Stirling noted that it was open to the ExA to write to The Crown Estate to request a timetable for providing consent.

6.3 Likelihood and implications of agreement not being reached

- 6.3.1 Ms Stirling reported that it is considered unlikely that The Crown Estate consent will not be forthcoming during Examination, noting that The Crown Estate's solicitors submitted agreed a joint statement confirming that it would be progressed in a timely manner just the previous day.

6.4 National Trust land or Commons (including town or village greens) open space or fuel or field garden allotments

- 6.4.1 Ms Stirling confirmed there is no special category land within the Order land.

7. Agenda Item 6 – Statutory Undertakers

7.1 Representations under section 127 Planning Act 2008

- 7.1.1 The ExA asked the Applicant to briefly set out the current position in relation to any representations made under section 127 of the Planning Act 2008 and that are not withdrawn.
- 7.1.2 Ms Stirling, on behalf of the Applicant, explained that section 127 applies in relation to statutory undertaker land if the land has been acquired by a statutory undertaker for the purposes of their undertaking and that undertaker has made a representation about the DCO application which is not withdrawn.
- 7.1.3 The DCO may only authorise the acquisition of that statutory undertaker land or rights in that statutory undertaker land if the Secretary of State is satisfied that the land or right can be purchased and not replaced without serious detriment to the carrying on of the undertaking or it can be purchased and other land used without serious detriment.
- 7.1.4 Ms Stirling updated that the Applicant is confident that all statutory undertaker representations will be withdrawn. The Applicant will monitor the situation and, mindful of the Examination timetable, make representations pursuant to section 127 of the Planning Act 2008 in sufficient time to allow those to be examined, if necessary. The Applicant is confident that it can satisfy section 127 if it is necessary to do so, in light of the protective provisions to be offered by the draft DCO which will ensure that there is no serious detriment to any statutory undertaker undertaking.

7.2 Application of section 138 Planning Act 2008

- 7.2.1 The ExA also asked the Applicant to explain the application of section 138 of the Planning Act 2008 to the draft DCO and list the statutory undertakers involved.
- 7.2.2 Ms Stirling explained that a DCO can only authorise the extinguishment of a relevant right of a statutory undertaker or relevant apparatus (i.e. rights or apparatus for the purposes of their undertaking), if the extinguishment or removal is necessary for the purposes of carrying out the authorised development.
- 7.2.3 The applicant has demonstrated in its submissions today and in its Statement of Reasons [APP-218] why the powers of CA which it seeks are necessary.

7.3 Protective provisions update

- 7.3.1 Ms Stirling ran through the latest position regarding protective provisions for each of the various individual statutory undertakers, as set out below:

- (c) **Anglian Water Services Limited** – the Applicant understands the protective provisions to be in final form and is awaiting confirmation from Anglian Water Services Limited of the same;
- (d) **British Telecommunications Plc** – the standard protective provisions have been accepted and so no further updates are necessary;
- (e) **Canal & River Trust** – discussions are ongoing between the Applicant and the Canal & River Trust who are in very regular contact on behalf of Gate Burton Energy Park, Cottam Solar Project, West Burton Solar Project and Tillbridge Solar Project. The Applicant expects that these can be agreed shortly;

Post-hearing submission: The Applicant has now agreed protective provisions with the Canal & River Trust, and these have been inserted at Part 11 of Schedule 15 of the draft DCO submitted at D3. The Applicant has also committed to a minimum HDD depth of 5m to cross the River Trent, which will be secured in updated Outline Design Principles to be submitted at Deadline 4.

- (f) **National Grid Electricity Transmission Plc (NGET)** – the Applicant is engaging with NGET to finalise some commercial points in a private agreement before the final minor drafting amendments in the protective provisions can be agreed. Good progress has been made and the Applicant expects these can be agreed shortly. Ms Stirling confirmed that the NGET side agreement does not deal with grid connection or any related limitations but instead manages the interactions between the different parties' apparatus;

Post-hearing submission: in response to the ExA's request at the CAH1, the Applicant has agreed with NGET to set out the following headings from the private agreement being entered into between the parties, to give the ExA an indication of its contents and purpose. The side agreement covers:

- (i) Participation in Examination;
- (ii) Confirmation of Protective Provisions;
- (iii) The provision of security (e.g. guarantee) from the undertaker to NGET;
- (iv) The undertaker to obtain relevant insurance;
- (v) Payment of costs;
- (vi) Confidentiality.

- (g) **Northern Power Grid** – the Applicant is considering Northern Power Grid's comments and expects to update the draft DCO with an agreed form of provisions shortly;
- (h) **Severn Trent Water Limited** – Severn Trent have confirmed it is satisfied to rely on its statutory rights, and therefore the standard protective provisions are satisfactory and no further updates are necessary;

Post-hearing submission: The Applicant has sought approval from Severn Trent Water Limited to submit a statement into Examination confirming its position that it is happy to rely on its statutory rights and does not require bespoke protective provisions. The Applicant is awaiting a response.

- (i) **EDF Energy (Thermal Generation) Limited** – EDF have indicated that they require bespoke protective provisions. The Applicant is awaiting for EDF to provide their proposed protective provisions.
- (j) **National Grid Electricity Distribution (East Midlands) Plc** – the protective provisions are agreed. These are included at Part 7 of Schedule 15 of the draft DCO.
- (k) **Trent Valley Internal Drainage Board** – the Applicant issued protective provisions to Trent Valley Internal Drainage Board in November 2022 but to date no response has been received. The Applicant understands that the IDB accepts that the protective provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the draft DCO operate to protect Trent Valley Internal Drainage Board's interests. This will be confirmed in the Statement of Common Ground being discussed between the parties.
- (l) **Uniper UK Limited** – Uniper have recently indicated that bespoke protective provisions are required and are to be provided on behalf of the four projects in the area (Cottam, West Burton, Gate Burton and Tillbridge). The Applicant is therefore seeking to negotiate a bespoke set of protective provisions with Uniper.
- (m) **Upper Witham Internal Drainage Board** – the Applicant issued protective provisions to Upper Witham Internal Drainage Board in November 2022 but to date no response has been received. The Applicant understands that the IDB accepts that the protective provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the draft DCO operate to protect Upper Witham Internal Drainage Board's interests.

Post-hearing submission: the Applicant confirms that the Statement of Common Ground with Upper Witham Internal Drainage Board [REP2-022] confirms the IDB's satisfaction with the standard protective provisions at Part 3 of Schedule 15 of the draft DCO.

- (n) **Network Rail Limited** – the protective provisions are in an agreed form and have been included at Part 10 of Schedule 15 of the draft DCO at Deadline 1, save for one outstanding point which has been included as a placeholder to confirm the Applicant's intention to include once discussions are finalised.
- (o) **Environment Agency** – the Applicant is in discussions with the Environment Agency and is awaiting a response on the latest draft set of protective provisions.

Post-hearing submission: Since CAH1, the Applicant has received comments back from the Environment Agency on the draft protective provisions. The Applicant and Environment Agency are advanced in protective provisions negotiations, with few commercial points remaining between them. The parties are in regular contact and are confident that protective provisions can be agreed for Deadline 4 (3 October 2023), and in any event before the end of Examination. This statement has been agreed by both parties.

- (p) **Exolum Pipeline Systems Limited** – the Applicant issued a draft set of protective provisions to Exolum in June 2023. The Applicant is awaiting a response from Exolum.

Post-hearing submission: The Applicant has updated the Statement of Reasons [APP-218] to ensure that any reference to the protective provisions being found at Schedule 9 in the DCO is amended to Schedule 15.

8. Agenda Item 7 – Review of Schedule of Negotiations and Powers Sought

- 8.1.1 Ms Stirling, on behalf of the Applicant, confirmed to the ExA that the reference to 'Version 1' in the most recently submitted clean version of the Schedule of Negotiations and Powers Sought [REP2-031] was errata.

Post-hearing submission: The Applicant has ensured the correct version number is included on the Schedule of Negotiations and Powers sought at Deadline 3.

- 8.1.2 The ExA asked the Applicant to summarise any outstanding objections and progress on negotiations on alternatives to CA.

8.1.3 Mr Dewey, on behalf of the Applicant, confirmed that there are no further objections than those set out in the Objections of CA Schedule [REP2-042]. Mr Dewey continued to provide an update in relation to each objector:

- (a) **EDF Energy (Thermal Generation) Limited** – technical discussions are ongoing. Heads of terms (HoTs) have been exchanged for the land agreement and are in negotiation. EDF have confirmed that until the technical discussions are resolved the land HoT's will not be signed. The Applicant is continuing to negotiate the HoT's in parallel with the technical work and discussions on the protective provisions.
- (b) **Northern Powergrid** – as Northern Powergrid do not have a land interest, the protective provisions are the appropriate mechanism to protect its interests.
- (c) **Mr Christopher Ash** – Mr Ash is included in the Book of Reference [AS-012] and has received notices as the owner of *rights* over various plots (1/1, 1/2, 1/4, 1/5, 2/4, 2/6,2/7,2/8, 3/1, and 3/4). The Applicant confirmed it is not seeking to acquire any residential properties as part of the Scheme and Mr Ash's interest is in historic rights in the Order land only.
- (d) **Mr Nicholas Hill and Ms Emma Hill** – It was noted that Mrs Garbutt was going to read a statement on their behalf and that their objection would be discussed in session 2. It was agreed that their objection would be treated as a joint objection.
- (e) **Shaun Kimberley** – Negotiations are in detailed final stages with their appointed agent in order to agree an option to acquire the rights required to install and operate the cables. The agreement includes the provision to make a compensation claim in respect of any losses suffered as a result of the acquisition. Mr Kimberley has raised concerns regarding the use of the land for grazing horses. The Applicant has not identified any significant impact upon their retained land during construction. The Applicant is awaiting a response from Mr Kimberley's agent but is confident that it can be agreed shortly.

Post-hearing submission: The Applicant has updated the Schedule of Negotiations and Powers Sought submitted at Deadline 3 to implement a red, amber and green colour coding system to indicate the status of agreements.

9. Agenda Item 8 – Funding

9.1.1 The ExA asked the Applicant to provide any further updates regarding the Funding Statement and whether adequate funding is likely to be available to enable the CA to proceed within the statutory period following the draft DCO being made.

- 9.1.2 Ms Stirling, on behalf of the Applicant, confirmed that there are no updates to the Corporate Structure in section 2.1 of the Funding Statement [APP-221]. However, the latest Consolidated Accounts for Low Carbon Limited are expected to be released in the coming month or so. The accounts are not anticipated to have materially changed as relevant to the Funding Statement, but nevertheless for good order the Applicant will update the Funding Statement with the latest version of the audited accounts. The Applicant expects to be in a position to do so at Deadline 4.
- 9.1.3 The Applicant is confident funds will be made available to enable CA to proceed, if required.

10. Agenda Item 9 – Individual Objections to CA and TP for each affected person

10.1 Mr Christopher Ash

- 10.1.1 Christopher Ash made oral representations to raise concerns around the engagement with the Applicant and sought clarity on relationship between his land and rights with the Scheme.
- 10.1.2 Mr Dewey, on behalf of the Applicant, confirmed that Mr Ash's interest in the land covered by the Scheme is in respect of rights across land joining his residential property and includes rights to pass and re-pass over a track and to use a drain / outlet covered by a deed dating back to 1977. The Applicant is not aware of Mr Ash owning any of the Order land.
- 10.1.3 Mr Dewey also confirmed that within the land titles identified by the Applicant, the rights owned by Mr Ash are in respect of pink land as part of the option for the CA of that land.
- 10.1.4 In terms of engagement, Mr Dewey set out that first contact was made with Mr Ash in May 2022 in relation to a land information questionnaire. The Applicant has since sent a section 42 notice regarding consultation in July 2022, and further targeted consultation in November 2022. The Applicant also sent a section 56 notice on 28 February 2023.

Post-hearing submission: Following the compulsory acquisition hearing, discussions were held with Mr Ash. The Applicant confirmed that the proposed acquisition relates to rights which he has over adjoining property and that the Applicant is not seeking to acquire his (or any other) residential property. It was agreed that subject to formal correspondence and agreeing a position statement, Mr Ash is willing to withdraw his objection. The Applicant is preparing written correspondence to this effect and expects to be able to provide an update at Deadline 4.

10.2 Mr Nicholas Hill and Ms Emma Hill

- 10.2.1 Elizabeth Garbutt orally submitted a statement on behalf of Mr and Ms Hill. Amongst other things, this statement included concerns over the potential interaction between the Scheme and two proposed barns to be built by the Hills pursuant to a recent planning permission obtained in January 2023. The statement also noted that Mr and Ms Hill have been willing to offer a wayleave or lease to accommodate the Applicant's infrastructure.
- 10.2.2 Ms Stirling, on behalf of the Applicant, confirmed the Applicant engaged with the planning permission application of Mr and Ms Hill and made representations to seek to ensure coexistence with the two barns and the schemes being proposed in the area.
- 10.2.3 Mr Dewey added that the Applicant has engaged with the Hills, and issued HoTs to them to give clarity on the voluntary agreement proposed. The Applicant has also set out its reasons for its preference for an easement over a wayleave or lease. In response to a query from the ExA on the terms of the offer, Mr Dewey continued that as is standard practice, the Applicant is seeking temporary access during construction and then a permanent easement for the cable.
- 10.2.4 Ms Stirling confirmed that the Applicant's position is that both developments can coexist. Mr and Ms Hill were aware of the Applicant's public plans when submitting their planning applications, and in any event would need further permissions for any future development plans. Ms Stirling confirmed that the Applicant will continue to engage with the Hills to seek to reach voluntary agreement.

Post-hearing submission: The Applicant welcomes the acceptance of the principle of a voluntary agreement and will seek to discuss further with Mr and Mrs Hill what form that agreement should take (easement, lease etc.). When purchasing the land, Mr and Mrs Hill would or should reasonably have been expected to have had regard to sellers property information and due diligence undertaken by legal advisors, all of which should have provided them with notice of our proposals before they made the decision to acquire it. Nonetheless, the purchase took place on notice of the Gate Burton proposals, which indicates those proposals would not interfere with their "long held plans" for the land. Notwithstanding, the Applicant wishes to reiterate its position that its proposals do not prevent their ambitions to expand their agricultural operations of Mr and Mrs Hills land. The Applicant remains committed to coexistence and if Mr and Mrs Hill would grant access for surveys, could seek to provide greater assurance on this. The Applicant will continue to update the Examining Authority as this matter progresses.

11. Agenda Item 10 – Review of issues and actions arising

11.1.1 The ExA summarised the actions arising as including:

1. The Applicant to provide some standard wording relating to the obligations under the Option agreements being entered with landowners (please see the post-hearing submission at paragraph 5.6.7 of this written summary);
2. The Applicant to provide further detail on the justification for the rights being sought in relation to plots 2/1 and 2/2 at Knaith Park (please see the post-hearing submission at paragraph 5.6.9 of this written summary);
3. The Applicant to provide the statement from Severn Trent confirming its position that it is happy to rely on its statutory rights and does not require bespoke protective provisions (please see the post-hearing submission at paragraph 7.3.1(f));
4. The Applicant to provide an outline of the nature of the side agreement being negotiated between the Applicant and NGET (please see the post-hearing submission at paragraph 7.3.1(d));
5. The Applicant to discuss with Mr Ash about nature of CA being sought with a view to submit an agreed position statement (please see the post-hearing submission at paragraph 10.1.4); and
6. The Applicant to provide a full and proper response in writing to Mr and Ms Hill's statement (please see the post-hearing submission at paragraph 10.2.4).

12. Agenda Item 11 – Any Other Matters

12.1.1 None.

13. Agenda Item 12 – Close

13.1.1 Hearing closed.