

Gate Burton Energy Park

EN010131

The Applicant's Closing Submissions
Document Reference: EN010131/APP/8.35
January 2024

Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010

Gate Burton Energy Park Limited

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1. INTRODUCTION

1.1 Purpose of this document

- 1.1.1 These Closing Submissions have been produced by Gate Burton Energy Park Limited (the “**Applicant**”) to summarise in one place its submissions on any outstanding matters that have been subject to submissions by Interested Parties, Affected Persons and the Applicant during the course of the Examination of the proposed Development Consent Order (“**DCO**”) for the Gate Burton Energy Park (the “**Scheme**”). It is provided to ensure that the Examining Authority, and ultimately the Secretary of State, is clear on the Applicant’s position in relation to these matters.
- 1.1.2 These Closing Submissions do not make new points but instead draw on, and refer to, submissions made by the Applicant in its application for the DCO for the Scheme (the “**DCO Application**”) and throughout the course of the Examination. The Applicant notes that the Guide to the Application [**REP6-002**] lists each of the DCO Application documents and also provides a breakdown of all submissions made by the Applicant during the Examination. It is submitted to assist all Interested Parties and to aid the Examining Authority and the Secretary of State in the reporting and decision-making process.
- 1.1.3 In doing so, this document re-states the Scheme’s compliance with relevant policy, legislation and guidance, the benefits of the Scheme, and points the Examining Authority and the Secretary of State to the evidence which is considered important or relevant to the application of section 105 of the Planning Act 2008 (“**PA 2008**”).
- 1.1.4 The Closing Submissions also provide details of the status of the Applicant’s negotiations with relevant statutory undertakers at the end of Examination, and in the very limited cases where agreement has not been finalised, provides the Applicant’s case pursuant to s127 and s138 of the PA 2008.
- 1.1.5 Finally, the Applicant has taken the opportunity to respond to the following Deadline 6 submissions:
- (a) The MMO’s “without prejudice” amendments to the deemed marine licence (“**DML**”) at Schedule 9 of the draft DCO;
 - (b) West Lindsey District Council’s (“**WLDC**”) further submissions on cumulative assessment scenarios;
 - (c) Lincolnshire County Council (“**LCC**”) and Nottinghamshire County Council’s (“**NCC**”) comments on the waste assessment; and
 - (d) Comments made by two interested parties relating to the potential for flooding at the River Trent.

1.2 The Scheme

- 1.2.1 The Scheme is a large scale solar photovoltaic (“**PV**”) array and Battery Energy Storage System connecting to the National Electricity Transmission System (“**NETS**”) at National Grid’s Cottam 400 kV Substation. The Scheme will be located within the DCO Order limits, which straddle the counties of Lincolnshire and Nottinghamshire and the districts of West Lindsey and Bassetlaw. The Scheme is being promoted by the Applicant.
- 1.2.2 The Scheme constitutes a Nationally Significant Infrastructure Project (“**NSIP**”) as an onshore generating station in England with a capacity of over 50MW, and therefore requires an application for a DCO to be submitted to the Planning Inspectorate for determination by the Secretary of State. The DCO Application was submitted in January 2023, with the Examination into the DCO Application commencing on 4 July 2023.
- 1.2.3 The Applicant submitted a change request application to the Examining Authority on 3 October 2023 which sought:
- (a) inclusion of additional land required to extend the Order limits immediately to the south of Torksey Ferry Road, for works to construct and operate the underground 400kV cable and associated development;
 - (b) inclusion of additional land required to extend the Order limits to the north, east and west along Torksey Ferry Road to accommodate access during construction and (for some parts of the road) during operation; and
 - (c) two reductions in the Order limits (and Order land).
- (the “**Change Request**”).

The details of all proposed changes are provided in the Change Request [CR1-042].

- 1.2.4 The Applicant noted that the need for the proposed changes to the Scheme arose from consultation with landowners and key stakeholders with assets at the former Cottam power station site (particularly EDF Energy (Thermal Generation) Limited); to accommodate statutory undertaker feedback received during Examination and to allow flexibility to minimise potential conflict with existing assets and potential future plans for the Cottam power station site; and the identification of opportunities to reduce the amount of land required for the Scheme.
- 1.2.5 In response, the Examining Authority published its decision to accept the Change Request into Examination on 6 October 2023. Following this, the Applicant ensured that any documents submitted into Examination after this date incorporated the changes forming part of the Change Request.

1.3 Continued engagement

1.3.1 The Applicant is committed to ongoing engagement with all stakeholders, including the local authorities and statutory environmental bodies. The Applicant recognises the importance of continuing to progress matters post-Examination including agreeing any outstanding protective provisions, and where relevant, will provide an update to the Planning Inspectorate and/or the Secretary of State.

2. NATIONAL POLICY STATEMENTS FOR ENERGY INFRASTRUCTURE

2.1 The suite of energy National Policy Statements (“**NPSs**”) was first designated in 2011. Section 3.2 of the Statement of Need provides a synthesis of those 2011 NPSs.

2.2 In the Energy White Paper (2020) (2-1) a review of the NPSs, pursuant to section 6 of the Planning Act 2008 (“**PA 2008**”), was announced. That review resulted in a number of amendments to the NPSs for energy infrastructure:

2.2.1 Section 3.3 of the Statement of Need provides a synthesis of the September 2021 draft revised NPSs.

2.2.2 A summary of the implications of the Government’s March 2023 draft revised NPSs on the Scheme was then provided to the Examining Authority in the Applicant’s response to Q1.1.1 of the Examining Authority’s First Written Questions [**REP2-041**].

2.2.3 In November 2023, the Government published newly revised NPSs (expected to be designated in January 2024). In response to the Examining Authority’s Rule 17 Request for Further Information [**PD-016**] on the potential effect of these NPSs, the Applicant updated the Planning Design and Access Statement [**REP6-004**] and [**REP6-006**] to incorporate an assessment of compliance with the revised NPSs.

2.3 In summary, the transitional provisions at paragraph 1.6.2 of the Overarching National Policy Statement for energy (EN-1) (November 2023) (2-2) (“**forthcoming NPS EN-1**”) explain that “*any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS*”. Critically, solar is not included within the scope of the 2011 NPSs because as at that time it was not proven at scale. Section 3.1 of the Statement of Need also describes this position.

2.4 However, paragraph 1.6.3 of forthcoming NPS EN-1 continues to state:

“The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they

are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application”.

- 2.5 Therefore, whilst the July 2011 and November 2023 NPSs do not have effect in relation to the application, both are capable of being important and relevant considerations in the decision-making process. The Applicant has submitted that both the 2011 and 2023 NPSs are important and relevant considerations, and significant weight should be given to them, when determining the DCO Application. As the November 2023 NPSs represent the Government’s latest energy-related policy, with technology specific policies relevant to solar PV in the NPS for renewable energy infrastructure (EN-3) (November 2023) (2-3) (“**forthcoming NPS EN-3**”), greater weight should be given to them.
- 2.6 The Applicant has also summarised in its Deadline 6 Cover Letter [**REP6-001**] the other points that the Applicant regards as important in relation to the Examining Authority’s request for information [**PD-016**], specifically the weight to be applied to the forthcoming NPSs (discussed in this section 2) and the need for solar development (see section 3 below). The Deadline 6 Cover Letter also confirmed that the only residual significant adverse effects of the Scheme are related to landscape and visual, noting that these are relatively limited given the scale of the project and its benefits. The residual adverse effects are outweighed by the Scheme benefits. The letter also highlighted the acknowledgement in forthcoming NPS EN-3 that solar development is expected on agricultural land and that low and medium grade land is preferred. This is important for the Scheme, which is located primarily on low and medium grade agricultural land.
- 2.7 Section 6 of the Planning Design and Access Statement [**REP6-004**] and [**REP6-006**] provides the Applicant’s full position on the legislative and policy context for the determination of the DCO Application and is not repeated here.

3. **NEED FOR, AND BENEFITS OF, THE SCHEME**

- 3.1 The Statement of Need [**APP-004**] demonstrates that at the time of the DCO Application, global commitments to decarbonise were not sufficient to meet nor sustain a (likely) successful track towards containing global temperature rise below 1.5C and that the policies implemented to date fall short even of those commitments (see section 4.6 and figure 4.3). Only the most dramatic and most urgent decarbonisation actions provide a route that is likely to achieve the aim of the Paris Agreement (2015), to which the UK is a signatory, and limit global warming to 1.5°C with no or limited overshoot.
- 3.2 The 28th Conference of the Parties to the United Nations Framework Convention on Climate Change (“**COP28**”) was held in Dubai from 30 November 2023 to 12 December 2023. In the closing statement, the UN Climate Change Executive Secretary celebrated strides made at COP28, including agreement among the parties to “*tripling renewables and doubling energy efficiency*” as well as signaling “*the beginning of the end*” of the fossil fuel era.

- 3.3 However, the Executive Secretary also stated that without the conferences and the international pledges which have been made, the world *“would be headed for close to 5 degrees of warming. An open-and-shut death sentence for our species. We are currently headed for just under 3 degrees. It still equates to mass human suffering, which is why COP28 needed to move the needle further. The global stocktake showed us clearly that progress is not fast enough, but undeniably it is gathering pace.”* (3-1)
- 3.4 On a global basis, COP28 concluded that the requirement for action to abolish carbon emissions is now more urgent than it ever has been. The same is true for the United Kingdom (“**UK**”). The Committee on Climate Change (“**CCC**”) published its annual Progress Report to Parliament in June 2023 (3-2). The report noted the lack of urgency in the delivery of decarbonisation in the UK and recommended to Parliament that the UK should stay firm on its existing commitments and move to delivery.
- 3.5 By doing so, the UK would be delivering on climate change and would also be bolstering its energy security. Following an expectation included in the British Energy Security Strategy (3-3) of a *“five-fold increase in deployment by 2035”* of solar capacity in the UK, the Powering Up Britain (3-4) policy paper clarified that *“we are aiming for 70 gigawatts of ground and rooftop capacity together by 2035 ... We need to maximise deployment of both types of solar to achieve our overall target.”*
- 3.6 The Government continues to encourage the development of other low-carbon technologies in addition to wind and solar to support its energy aims but many have long and uncertain development timescales and are unlikely to deliver at scale before 2030. The summary of progress included at section 5.4 of the Statement of Need remains relevant, although some progress has been made on these other technologies since the Statement of Need was submitted:
- 3.6.1 Recent progress has been made in developing and consenting Carbon Capture Use and Storage (“**CCUS**”) projects as well as developing a commercial framework to support the technology. The Government’s CCUS Deployment Pathway (3-5) seeks to secure an option to deploy CCUS at scale during the 2030s, subject to costs coming down sufficiently.
- 3.6.2 Powering Up Britain confirmed the Government’s ambition of up to 1GW of electrolytic hydrogen and up to 1GW of CCUS-enabled hydrogen in operation or construction by the end of 2025, subject to affordability and value for money. However, progress in the Government’s Hydrogen Allocation Rounds (3-6) implies that this ambition is unlikely to be met.
- 3.6.3 On nuclear power, Sizewell C, which is proposed to be a replica of Hinkley Point C, received development consent in July 2022 although a Financial Investment Decision has not yet been taken, likely pushing first commercial operation at Sizewell back into the second half of the 2030s.
- 3.6.4 In October 2023, Great British Nuclear selected six Small Modular Reactor companies which offered *“the greatest confidence in being able to make a*

final investment decision in 2029 and be *“most able to deliver cutting-edge technology by [the] mid-2030s”* through the initial stage of a nuclear technology competition.

- 3.7 The development, in the 2020s, of large-scale ground mount solar in the UK is one measure which will reduce the UK’s dependency on carbon-intensive fuels, support the delivery of the UK’s international climate change commitments for 2030, move the country towards a carbon-free electricity system by 2035 and support achieving net zero in the UK by 2050, thereby ending the UK’s contribution to global warming. See sections 4.3, 4.5 and 9.9 of the Statement of Need.
- 3.8 As set out of section 2 of these Closing Submissions, the forthcoming NPSs from November 2023 are capable of being important and relevant considerations.
- 3.9 The forthcoming NPSs provide further substantiation of the critical role large-scale ground mount solar needs to take towards achieving the Government’s aims for a zero-carbon, secure and affordable energy system. Critically, paragraph 3.1.1 of forthcoming NPS EN-1 *“Government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and ... considers that the need for such infrastructure is urgent.”*
- 3.10 Paragraph 3.3.20 of forthcoming NPS EN-1 reconfirms the Government’s view that *“a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar.”* Paragraph 3.3.60 confirms that solar schemes are *“included within the scope of this NPS”* and would be classed as NSIPs if, like the Scheme, they are above the applicable capacity threshold of 50MW.
- 3.11 Paragraphs 3.3.57 to 3.3.64 of forthcoming NPS EN-1 establish the urgent need for electricity generating capacity. Paragraph 3.3.61 states that *“The need for all these types of infrastructure is established by this NPS and a combination of many or all of them is urgently required for both energy security and Net Zero”* and paragraph 3.3.62 states the Government’s conclusion that *“there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure”* including all onshore and offshore renewable generation (paragraph 4.2.5). Therefore, all large-scale, ground-mount solar projects, including the Scheme, constitute CNP infrastructure. This section of NPS EN-1 concludes that *“Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible”* (see paragraph 3.3.64).
- 3.12 If the Scheme had not been accepted for examination prior to the designation of the latest NPSs, then forthcoming NPS EN-1 would ascribe to the Scheme a Critical National Priority. Paragraph 4.1.7 of forthcoming NPS EN-1 describes that, as a result of the increased urgent need for the Scheme and others like it, it would be likely that the need case for the Scheme would outweigh any residual effects of the Scheme, assuming that the ExA has not identified any which are “exceptional”. The residual effects of the Scheme cannot reasonable be considered “exceptional” given they amount to very limited landscape and visual effects.

- 3.13 The forthcoming NPS EN-1 also establishes the urgent need for “*new electricity network infrastructure to be brought forward at pace to meet our energy objectives*” (paragraph 3.3.65), recognising that the current network and available connection points are not of sufficient scale to connect the capacity required. New electricity networks and connections to them also constitute CNP Infrastructure (paragraph 4.2.5).
- 3.14 The Department of Energy Security and Net Zero (“**DESNZ**”), along with Ofgem, Great Britain’s independent energy regulator, published in November 2023 a Connections Action Plan (3-7). The Connections Action Plan sets out six key areas of action to speed up connections to the electricity network across Great Britain.
- 3.14.1 Action Area three is to “*Better utilise existing network capacity*” to reduce connection timelines. At page 23 of the Connections Action Plan, DESNZ and Ofgem state that “*Efficient utilisation of existing networks can defer or negate the need for expensive new infrastructure, which takes time to deliver. It can also allow connections before the enduring solution of new infrastructure is delivered.*”
- 3.14.2 Action Area four is to “*Better allocate available network capacity*” to connect projects that are readier to progress and are able to quickly make use of that capacity. At page 41 of the Connections Action Plan, DESNZ and Ofgem state that a “*more immediate and typically lower cost method [of increasing network capacity], is to maximise the use of the currently available and planned network capacity*”.
- 3.15 The Scheme proposes to connect to an existing and available connection point on the NETS, the benefits of which are described in Chapter 10 of the Statement of Need. Therefore, the Scheme presents an opportunity to reduce the need for new infrastructure (by utilising existing infrastructure). Consenting the Scheme would deliver significant energy security, decarbonisation and affordability benefits to UK consumers because of the speed of development and connection of the Scheme to the NETS.
- 3.16 In summary:
- 3.16.1 COP28 delegates agreed that there is a growing need to deliver low-carbon infrastructure with urgency;
- 3.16.2 The CCC have reported to the Government that UK decarbonisation actions must also “*move to delivery*”;
- 3.16.3 Although long-lead time technologies have progressed over the last 12 months, none are likely to deliver a significant energy security or decarbonisation benefit before 2030 and costs remain uncertain;
- 3.16.4 In its November 2023 NPSs, the Government has reconfirmed that solar is likely to play a significant role in a secure, reliable, affordable, net zero consistent energy system in 2050 and has strengthened policy support for

large-scale ground-mount solar, on account for the growing urgent need and critical national priority for the delivery of low-carbon infrastructure; and

3.16.5 Network connection for low-carbon generation schemes is also a critical national priority and the Connections Action Plan supports maximising the use of the currently available network capacity especially where projects are able to quickly make use of that capacity.

3.17 The growing urgency for low-carbon infrastructure in the UK provides further support to the concluding paragraphs 13.1.6 and 13.1.7 of the Statement of Need:

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

This Scheme is a leading GB large-scale solar scheme, and is an essential stepping-stone towards the future of efficient decarbonisation through the deployment of large-scale, technologically and geographically diverse low-carbon generation schemes. This Scheme addresses all important aspects of existing and emerging government policy.”

4. STATUTORY UNDERTAKER UPDATES

4.1 Interests in the Order land which are held by each statutory undertaker are identified in the Book of Reference [REP6-031]. The Applicant has been and continues to engage with these statutory undertakers to ensure the Scheme can be developed without serious detriment to any statutory undertaking, including the provision of the protective provisions within Schedule 15 of the draft DCO, the vast majority of which are in final agreed form. Table 3 of the Schedule of Negotiations and Powers Sought [REP6-029] included the final position on the status of negotiations with statutory undertakers as at Deadline 6.

4.2 The Applicant has included protective provisions in the final draft DCO [REP6-047] for the benefit of the statutory undertakers (see Article 43 and Schedule 15). The Applicant has successfully agreed final protective provisions with all statutory undertakers, save for the following outstanding points:

4.2.1 **EDF Energy (Thermal Generation) Limited** – there is a placeholder at paragraph 190 of Schedule 15 for any further provision relating to compulsory acquisition which may arise from voluntary negotiations and the protective provisions at Part 15 of Schedule 15 are otherwise agreed with EDF. The Applicant considers that the protective provisions in their current form are sufficient to protect EDF’s interests, as explained in the section 127 statement accompanying these Closing Submissions. The Applicant also understands that Heads of Terms for the voluntary land agreement are now agreed with EDF, save for final commercial matters, and the Applicant is

continuing to liaise with EDF in order to reach a commercial agreement. The Applicant will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.

- 4.2.2 **Network Rail Infrastructure Limited** – there is a placeholder at paragraph 116 of Schedule 15 for the same reasons as EDF above. The protective provisions at Part 10 of Schedule 15 are otherwise agreed with Network Rail and the Applicant considers that they are sufficient to protect Network Rail’s interests in their current form, as explained in the section 127 statement accompanying these Closing Submissions. The Applicant also understands that Heads of Terms for the voluntary land agreement are now agreed with Network Rail, save for final commercial matters. The Applicant is continuing to liaise with Network Rail in order to reach a commercial agreement and will update the Secretary of State (as necessary) after the close of the Examination to confirm what amendments may be required to the draft DCO in the event that voluntary land agreement is or is not reached.
- 4.2.3 **Trent Valley Internal Drainage Board** – In accordance with section 150 of the 2008 Act and the Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, the Applicant requires Trent Valley IDB’s consent to disapply section 23 of the Land Drainage Act 1991, which the Applicant is seeking to do through Article 6 of the draft DCO. The Applicant has therefore included protective provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the final draft DCO, which operate to protect Trent Valley IDB’s interests. The intention to disapply section 23 of the Land Drainage Act 1991 is standard and well precedented. For example, section 23 of the Land Drainage Act 1991 is disapplied in [The Longfield Solar Farm Order 2023](#), [The A417 Missing Link Development Consent Order 2022](#), [The A428 Black Cat to Caxton Gibbet Development Consent Order 2022](#), [The Great Yarmouth Third River Crossing Development Consent Order 2020](#) and [The Drax Power \(Generating Stations\) Order 2019](#). The Applicant will continue to liaise with Trent Valley IDB in order to obtain the necessary consent to the disapplication and will update the Secretary of State (as necessary) after the close of the Examination.
- 4.2.4 **Uniper UK Limited** – The Applicant has contacted Uniper frequently since August 2023 for comments on the standard protective provisions for the protection of electricity, gas, water and sewerage undertakers included at Part 1 of Schedule 15 of the DCO. The Applicant considers these well-precedented and standard provisions are sufficient to protect Uniper’s interests, as explained in the section 127 statement accompanying these Closing Submissions. On Saturday 16 December 2023, Uniper provided a proposed bespoke set of protective provisions for the Applicant to consider. Given the limited time available in advance of Deadline 6 on Thursday 21 December 2023 and Deadline 7 on 4 January 2024, the Applicant was unable to agree a bespoke set of protective provisions to be included in the final draft DCO. However, the Applicant will continue to liaise with Uniper on

protective provisions and will update the Secretary of State (as necessary) after the close of the Examination.

4.3 In light of the above and the existing protections that are already included within the final draft DCO [REP6-047], the Applicant considers that the compulsory acquisition powers being sought should be granted, notwithstanding any outstanding representations. Please see the Applicant's full statement pursuant to s127 and s138 of the PA 2008 at Appendix 1 to these Closing Submissions.

5. **OTHER LAND INTERESTS**

5.1 There has been no change since the Schedule of Negotiations and Powers Sought [REP6-029] submitted at Deadline 6.

5.2 Notwithstanding any outstanding voluntary agreements, the Applicant has demonstrated that the land and rights being sought are required for the Scheme, and that there is a compelling case in the public interest for compulsory acquisition powers to be granted. All statutory and policy tests for the inclusion of compulsory acquisition powers in the DCO have been met.

6. **THE APPLICANT'S FINAL POSITION ON POINTS RAISED IN DEADLINE 6 SUBMISSIONS**

6.1 **Cumulative assessment**

Approach to cumulative assessment

6.1.1 The Applicant notes that in its Deadline 6 submission [REP6-050], WLDC continues to assert that there is an omission in the approach to the cumulative assessment, as all potential scenarios for the development of the Scheme, and the Cottam, West Burton and Tillbridge solar schemes have not been assessed and that there is therefore an "all or nothing" approach to deciding the DCO applications for the projects. The Applicant strongly rejects this unsubstantiated assertion; WLDC's case is ill-founded.

6.1.2 Chapter 5 of the Environmental Statement ("ES"): EIA Methodology [APP-014] sets out that the ES was produced by adopting the well-established 'Rochdale Envelope' approach. This approach enables the Applicant to carry out an environmental assessment on the basis of a "worst-case scenario" design envelope, which in a cumulative scenario has been determined by professional judgement to be the scenario of all four solar NSIPs (Gate Burton, Cottam, West Burton and Tillbridge) being developed.

6.1.3 The Rochdale Envelope is a justified approach on the basis that if the Scheme (and its cumulative effects) is acceptable in light of the likely effects that are predicted from a worst-case scenario, which includes development of all four solar NSIPs, then the Scheme will remain acceptable if any combination of those projects transpires. This is because any actual effects would be no worse than those that had already been assessed and

considered in the environmental impact assessment and planning balance. The approach adopted by the Applicant accords with case law, guidance and standard EIA practice, including the Planning Inspectorate's Advice Note Nine: Rochdale Envelope (6-1).

- 6.1.4 The cumulative assessments presented in relation to each specific chapter 6-15 have assessed a scenario whereby all schemes come forward. The Applicant therefore considers that a worst-case scenario has been assessed and presented the worst-case cumulative effects of Gate Burton, Cottam, West Burton and Tillbridge, together with the other schemes identified within ES Appendix 16-A [APP-181]. As such, an assessment which considers the different potential combinations of various schemes is not required because any other scenario (for example, if one or more schemes did not come forward) would result in effects which are equal to or less than the worst-case scenario already presented.
- 6.1.5 The Applicant notes that WLDC makes reference to the Cottam Solar Project Examination and therefore the Applicant wishes to ensure the ExA is clear that the position of the applicant for the Cottam Solar Project is the same as the Applicant for the Gate Burton Scheme. The legal representative for the Cottam Solar Project summarised its client's position in the Written Summary of the Applicant's Oral Submissions and Responses at ISH 4 submitted into the Cottam Examination as:
- “For the purposes of this application, Ms Brodrick reiterated that the Applicant has assessed the worst case scenario in respect of cumulative effects which is all of the projects coming forward.”*
- 6.1.6 Whilst the Cottam Solar Project Examining Authority did request for the applicant for the Cottam Solar Project and WLDC to document their position on cumulative effects within a statement of common ground, this cannot be taken to infer understanding or much less agreement with WLDC's position, as may be suggested by WLDC's Deadline 6 submission for this Scheme.
- 6.1.7 Ultimately, the Applicant has provided a robust, evidenced and justified cumulative assessment which is adequate and appropriate to inform the Secretary of State's decision making and there is no reason, legal or otherwise, that all potential cumulative scenarios need to be considered. This would be contrary to established EIA case law, guidance and practice.

6.2 Marine Management Organisation

- 6.2.1 The Applicant notes the MMO's Deadline 6 response largely repeats its previous position on the inclusion of the DML within the draft DCO for the Scheme. The Applicant has responded substantively to explain its position, most recently in its response to the Rule 17 letter at [REP5-049] and those submissions are not repeated here. That response also sets out how the crossing of the River Trent has been assessed within the Environmental

Statement, provides a risk assessment and signposts secured mitigations. Again, those submissions are not repeated here.

- 6.2.2 The Applicant notes however that the MMO has now provided without prejudice comments on the draft DML conditions, which the Applicant considers prudent to comment upon. Please see Appendix 2 which contains a table of the Applicant's responses to the MMO's comments on the DML. These responses have been discussed and agreed between the Applicant and the applicants for the Cottam Solar Project and West Burton Solar Project.

6.3 Waste Assessment

- 6.3.1 The Applicant notes that LCC and NCC provided comments on the ExA's Rule 17 request [**PD-017**] with regards to the assessment of waste.
- 6.3.2 Paragraph 15.8 of Chapter 15 of the ES: Other Environmental Topics [**APP-024**] assesses Waste and Recycling. It concludes that significant residual effects are defined as moderate or major but no such effects are expected for waste during construction, operation or decommissioning of the Scheme.
- 6.3.3 Chapter 15 also concludes that because the quantities of construction waste are expected to be very small and it is also likely that the waste generated by the Scheme during operation and decommissioning would be managed by specialist regional or national facilities, no cumulative waste impacts are identified for the Scheme. See paragraphs 15.8 30 and 15.8.31.
- 6.3.4 The Applicant's Response to the Examining Authority's Rule 17 Request: Waste [**REP6-045**] sets out an updated Technical Note containing the Applicant's final position in relation to the waste assessment for the Scheme.
- 6.3.5 As requested by the Examining Authority and supported by LCC [**REP6-048**] and NCC [**REP6-049**], that Technical Note applies the Methodology W1 from the Institute of Environmental Management & Assessment (2020) Guide to Materials and Waste in Environmental Impact Assessment (the "**IEMA Guide**") to waste arising from the Scheme including cumulative impacts.
- 6.3.6 The assessment was undertaken by Mike Bains BSc CChem MRSC, who is listed as a contributing author in the IEMA Guide.
- 6.3.7 In summary, the assessment presented in the Technical Note concludes that when assessing waste generated by the Scheme using the Methodology W1 from the IEMA Guide, there are no new or different significant adverse effects identified when compared to the assessment presented in Chapter 15 of the ES.

6.4 Flooding near the River Trent

- 6.4.1 The Applicant notes that two submissions at Deadline 6 from interested parties refer to the risk of flooding at the River Trent and therefore its suitability for trenching, namely [REP6-063] and [REP6-054]. These interested parties are the owners of land comprised in the Grid Connection Corridor, and in relation to which the Applicant continues to seek to agree Heads of Terms. As such, the Applicant thought it would be helpful to explain how the risk of flooding is appropriately controlled within the DCO Application.
- 6.4.2 The crossing of the River Trent is within an avoidance area and therefore cabling will be installed using horizontal directional drilling (HDD) rather than trenching, in accordance with the Outline Design Principles [REP6-009] which are secured by Requirement 5 of Schedule 2 of the DCO.
- 6.4.3 The construction, operation and decommissioning of the Scheme will take place in accordance with a Construction Environmental Management Plan (“CEMP”) [REP5-023], Operational Environmental Management Plan (“OEMP”) [REP2-025] and Decommissioning Environmental Management Plan (“DEMP”) [REP5-025]. This is secured through Requirements 12, 13 and 19 respectively of Schedule 2 of the DCO.
- 6.4.4 As stated within Table 3-3 of the CEMP launch and exit pits will be located outside of Coastal and Floodplain Grazing Marsh either side of the River Trent to prevent impacts to this habitat.
- 6.4.5 Outside of the avoidance areas, Table 3-4 Water Environment of the CEMP sets out the measures that will be adopted throughout construction to manage flood risk and prevent pollution incidences e.g. through specific requirements for the safe storage of chemicals / other hazardous materials (e.g. fuel) reaching watercourses during flood events during construction.
- 6.4.6 As such, appropriate measures to mitigate flood risk are already secured through the requirements in the DCO at Schedule 2 to ensure that the activities authorised by the DCO are sufficiently controlled and that reinstatement will take place.
- 6.4.7 Whilst the commitment to reinstatement following construction is secured via the CEMP, if it becomes necessary for the Applicant to rely on its compulsory powers and/or take temporary possession of the land, the Applicant will be liable to compensate the landowners in accordance with the compensation code for any loss or damage arising from the exercise of its powers.

7. CONCLUSIONS

- 7.1 As set out in the DCO Application and Examination deliverables, and summarised in these Closing Submissions, there is a clear and compelling need for the Scheme which outweighs its very limited residual adverse effects. The Applicant has provided all necessary information to inform the ExA's Recommendation Report and the Secretary of State's decision making.
- 7.2 Agreement has been reached with the vast majority of relevant statutory undertakers, and protective provisions for all relevant undertakers are included within Schedule 15 of the draft DCO. On the basis of the protections offered, the Secretary of State can be satisfied that there would be no serious detriment to any statutory undertaking and that the powers sought by the Applicant are necessary and should be granted.
- 7.3 The Scheme comprises critical national priority infrastructure, for which there is an urgent national need as defined and established in the November 2023 NPSs. There are no overriding or "exceptional" local impacts. On that basis, and for the reasons given throughout this document, the case has been made for: (1) the Examining Authority to recommend that the DCO be made; and (2) the Secretary of State to so make it, in the form submitted by the Applicant at Deadline 6.
- 7.4 Finally, the Applicant wishes to take this opportunity to thank the Examining Authority, the case team and the Planning Inspectorate, and all those individuals and organisations who have participated in the consultation and examination of the Scheme.

APPENDIX 1

Section 127 and Section 138 Statement

1. Introduction

- 1.1 The Applicant submitted the DCO Application for the Scheme. As set out in Section 10.3 of the Statement of Reasons [**REP3-008**], the Order land includes land, rights or other interests owned by statutory undertakers.

2. Legislative position

- 2.1 Section 127 (“**s127**”) of the PA 2008 applies where:

- 2.1.1 the land or interest has been acquired by statutory undertakers for the purposes of their undertaking;
- 2.1.2 a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and
- 2.1.3 as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.

- 2.2 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:

- 2.2.1 the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- 2.2.2 the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.

- 2.3 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:

- 2.3.1 the right can be purchased without serious detriment to the carrying on of the undertaking; or
- 2.3.2 any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.

- 2.4 Section 138 (“**s138**”) of the PA 2008 applies if a DCO authorises the acquisition of land (compulsorily or by agreement) and:

- 2.4.1 there subsists over the land a relevant right (defined in s138(2)); or

2.4.2 there is on, under or over the land relevant apparatus (defined in s138(3)).

2.5 Section 138(4) of the PA 2008 states that an order may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

3. **End of Examination s127 and s138 cases**

3.1 The DCO Application includes provisions authorising the compulsory acquisition of land and/or new rights over land, or affecting rights, belonging to statutory undertakers. As at Deadline 7, some representations made by statutory undertakers have not been formally withdrawn, including by EDF Energy (Thermal Generation) Limited ("**EDF**") and Network Rail Infrastructure Limited ("**Network Rail**").

3.2 The Applicant has agreed the form of protective provisions with both EDF and Network Rail, in each case except for one remaining provision. These protective provisions are included at Part 15 and Part 10 of Schedule 15 respectively, in the final draft DCO submitted at Deadline 6. The placeholder in each set of provisions is for any further provision relating to compulsory acquisition which may arise from voluntary negotiations, which currently remain outstanding. Any further provision to enable withdrawal of the representations by the relevant statutory undertakers is therefore pending completion of voluntary land agreements that are in the process of being negotiated. The Applicant is confident that the representations will be withdrawn shortly after the close of the Examination once the relevant property agreements are signed. Notwithstanding, the Applicant considers that the protective provisions in their current form are sufficient to protect these statutory undertakers and to enable the Secretary of State to be satisfied there is no risk of a serious detriment to their statutory undertaking, as further expanded on below.

3.3 The Applicant will continue to liaise with these statutory undertakers, however in the event that the representations are not formally withdrawn, the Applicant has set out in Table 1 below the reasons why the Applicant considers that the tests set out in s127(2) and s127(5) of the PA 2008 are satisfied. For completeness, the Applicant has also included in the table below the position in respect of all statutory undertakers.

3.4 Section 138 of the PA 2008 is engaged by Article 23 of the draft DCO. This Article will permit the undertaker to extinguish or relocate the rights or apparatus of statutory undertakers and electronic communications apparatus. Such power may only be included in the DCO if the Secretary of State is satisfied the extinguishment or removal is necessary for the authorised development.

3.5 The exercise of such powers will be carried out in accordance with the protective provisions contained in Schedule 15 of the DCO which set out constraints on their exercise with a view to safeguarding the statutory undertakers' and electronic communications apparatus owners' interests. The Applicant therefore considers that the test set out s138 of the PA 2008 is satisfied.

Table 1 – Section 127 PA 2008 Tests

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
17/5, 17/6, 17/7, 17/8, 17/12, 17/13, 17/20, 17/21, 18/1, 18/2, 18/3, 18/4	EDF Energy (Thermal Generation) Limited	<p>EDF submitted representations in respect of the DCO application ([RR-065], [REP2-060] and [REP4-062]). As at Deadline 7, these representations have not been withdrawn. The Applicant understands that the form of protective provisions included in Part 15 of Schedule 15 to the final draft DCO submitted at Deadline 6 is agreed, subject to the existing placeholder at paragraph 190 being replaced with provision in relation to compulsory acquisition pending voluntary negotiations.</p> <p>The parties are currently negotiating the voluntary land agreement which the Applicant understands will enable EDF to formally withdraw its representation(s).</p>	<p>EDF owns land and has apparatus and interests within the Order land for the purposes of its undertaking as an Electricity Act 1989 licence holder.</p> <p>In its representations, EDF raised concerns regarding works being carried out in proximity to its apparatus and the use of compulsory acquisition powers unless and until suitable protective provisions had been secured in the draft DCO to ensure that its interests are adequately protected and to ensure compliance with relevant safety, decommissioning and third-party obligations.</p> <p>Protective provisions for the benefit of EDF are included in Part 15 of Schedule 15 to the draft DCO submitted at Deadline 6. These protective provisions currently include a placeholder at paragraph 190, for any further provision relating to compulsory acquisition which may arise from voluntary negotiations.</p> <p>In any event, the Applicant considers that through the protection afforded by the protective provisions in their current form and which are otherwise agreed, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of EDF's undertaking.</p>
3/2, 5/11, 6/3, 6/6, 6/8, 10/15, 15/11	Network Rail Infrastructure Limited	<p>Network Rail submitted representations in respect of the DCO application ([RR-194] and [REP2-065]). As at Deadline 7, these representations have not been withdrawn. that the Applicant understands that the form of protective provisions included in Part 10 of Schedule 15 to the final draft DCO submitted at Deadline 6 is agreed, subject to the existing placeholder at</p>	<p>Network Rail owns land and has apparatus and interests within the Order land for the purposes of its railway undertaking as a railway operator for the majority of the rail infrastructure of Great Britain, including the Sheffield to Lincoln Line and verges, which lies to the east of Gate Burton (the "Railway").</p> <p>In its representations, Network Rail raised concerns regarding works being carried out in proximity to its apparatus and the</p>

		<p>paragraph 116 to be replaced with provision in relation to compulsory acquisition pending voluntary negotiations.</p> <p>The parties are currently negotiating the voluntary land agreement which the Applicant understands will enable Network Rail to formally withdraw its representation(s). A form of framework agreement has also been agreed with Network Rail, with the intention for the framework agreement to be entered simultaneously with the land agreement. .</p>	<p>use of compulsory acquisition powers unless and until: (1) adequate protective provisions and/or requirements are included within the DCO; and (2) an agreement is entered to ensure that the new rights sought are exercised in regulated manner to prevent adverse impacts to the Railway.</p> <p>Protective provisions for the benefit of Network Rail are included in Part 10 of Schedule 15 to the draft DCO submitted at Deadline 6. This currently includes a placeholder at paragraph 116, for any further provision relating to compulsory acquisition which may arise from voluntary negotiations. The parties have also agreed the terms of a framework agreement, with the intention that this agreement will be completed concurrently with the land agreement.</p> <p>In any event, the Applicant considers that through the protection afforded by the protective provisions in their current form and which are otherwise agreed, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of Network Rail's undertaking.</p>
6/13, 12/6, 12/9, 13/1, 13/2, 13/3, 13/5, 13/6, 13/8, 14/3, 14/4, 14/6, 14/9, 14/12, 14/15, 14/16, 14/18, 14/19, 15/2, 15/6, 15/7, 15/14, 17/3, 17/4, 17/5, 17/6, 17/7, 17/13, 17/14, 17/20, 17/21, 18/1	Trent Valley Internal Drainage Board	<p>Trent Valley IDB submitted a representation in respect of the DCO application [RR-0330].</p> <p>The final Statement of Common Ground [REP6-020] confirms that all matters remain under discussions between the Applicant and Anglian Water. The SoCG acknowledges that the DCO includes protective provisions at Part 3 of Schedule 15 of the draft DCO for the protection of drainage authorities. Whilst the SoCG does not identify any concerns with these protective provisions, the representation has not been withdrawn and therefore s127 is triggered.</p>	<p>The Applicant has included protective provisions for the benefit of drainage authorities at Part 3 of Schedule 15 of the final draft DCO, which operate to protect Trent Valley IDB's interests. The Applicant understands that whilst these protective provisions are agreed, Trent Valley IDB is unwilling to provide its consent to the disapplication of section 23 of the Land Drainage Act 1991. The Applicant's position is that the disapplication does not harm Trent Valley IDB's interests because the protective provisions are in place for their protection as a drainage authority.</p> <p>The Applicant considers that through the protection afforded by the protective provisions, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of Trent Valley IDB's undertaking.</p>
7/2	Upper Witham Internal Drainage Board	Upper Witham IDB submitted a representation in respect of the DCO application [RR -281].	Agreed protective provisions for the benefit of drainage authorities are included at Part 3 of Schedule 15 of the final draft DCO submitted at Deadline 6. The content of the signed

		<p>The final Statement of Common Ground [REP2-022] confirms that all matters are agreed between the Applicant and Upper Witham IDB. The SoCG acknowledges that the DCO also includes agreed protective provisions at Part 3 of Schedule 15 of the draft DCO. Therefore, the Applicant does not consider that s127 of the PA 2008 is triggered because any objection is considered withdrawn by virtue of the SoCG.</p>	<p>SoCG with Upper Witham IDB demonstrates that its representation has been withdrawn.</p>
13/4	Canal & River Trust	<p>The Canal & River Trust submitted a representation in respect of the DCO application [RR-015].</p> <p>The final Statement of Common Ground [REP4-016] confirms that all matters that are agreed between the Applicant and the Canal & River Trust. The SoCG acknowledges that the DCO also includes agreed protective provisions at Part 11 of Schedule 15 of the draft DCO. Therefore, the Applicant does not consider that s127 of the PA 2008 is triggered because any objection is considered withdrawn by virtue of the SoCG.</p>	<p>Agreed protective provisions for the benefit of Canal & River Trust are included within Part 11 of Schedule 15 of the final draft DCO submitted at Deadline 6.</p> <p>The Applicant considers that through the protection afforded by the protective provisions, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of the Canal & River Trust's undertaking. The content of the signed SoCG with the Canal & River Trust demonstrates that its representation has been withdrawn.</p>
1/4, 1/6, 2/2, 7/6, 7/7, 11/1, 11/2, 11/3, 11/4, 14/9, 14/11, 14/20, 16/1, 16/2, 16/3	Anglian Water Services Limited	<p>Anglian Water submitted a representation in respect of the DCO application [RR-015].</p> <p>The final Statement of Common Ground [REP4-017] confirms that all matters are agreed between the Applicant and Anglian Water. The SoCG acknowledges that the DCO also includes agreed protective provisions at Part 6 of Schedule 15 of the draft DCO. Therefore, the Applicant does not consider that s127 of the PA 2008 is triggered because any objection is</p>	<p>Agreed protective provisions for the benefit of Anglian Water are included at Part 6 of Schedule 15 of the final draft DCO submitted at Deadline 6.</p> <p>The Applicant considers that through the protection afforded by the protective provisions, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of Anglian Water's undertaking. The content of the signed SoCG with Anglian Water demonstrates that its representation has been withdrawn.</p>

		considered withdrawn by virtue of the SoCG.	
12/9, 12/18, 12/19, 12/21, 14/4, 14/9, 14/20, 15/6, 15/7, 15/10, 17/4	National Grid Electricity Distribution (East Midlands) Plc	<p>NGED submitted a representation in respect of the DCO Application [RR-190]. As at Deadline 7, this representation has not been withdrawn.</p> <p>NGED has confirmed that the form of protective provisions included in Part 7 of Schedule 15 to the draft DCO submitted at Deadline 6 are agreed. A side agreement is in an agreed form and being prepared for signature. Once the side agreement has been completed, NGED will formally withdraw its representation.</p>	<p>NGED has interest in the Order land for the purposes of its undertaking as an Electricity Act 1989 licence holder. Agreed protective provisions for the benefit of NGED are included at Part 7 of Schedule 15 of the final draft DCO submitted at Deadline 6.</p> <p>Given the protection afforded by the protective provisions and associated side agreement, the Applicant considers that the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of NGED's undertaking.</p>
12/1, 12/2, 12/3, 12/5, 12/16, 13/8, 14/9, 14/20, 15/2, 15/7, 15/10, 15/14, 16/3, 17/5, 17/6, 17/7, 17/8, 17/9, 17/10, 17/11, 17/12, 17/14, 17/16, 17/20, 17/21	National Grid Electricity Transmission Plc	<p>NGET submitted representations in respect of the DCO Application [RR-191] and [REP2-064]. As at Deadline 7, this representation has not been withdrawn.</p> <p>NGET has confirmed that the form of protective provisions included in Part 9 of Schedule 15 to the draft DCO submitted at Deadline 6 are agreed. A side agreement is in an agreed form and being prepared for signature. Once the side agreement has been completed, NGET will formally withdraw its representation.</p>	<p>NGET has interest in the Order land for the purposes of its undertaking as an Electricity Act 1989 licence holder. Agreed protective provisions for the benefit of NGET are included at Part 9 of Schedule 15 of the final draft DCO submitted at Deadline 6.</p> <p>The Protective Provisions also ensure that (if necessary) no compulsory acquisition powers over NGET's land can be exercised without NGET's agreement (paragraph 102 of Part 9 of Schedule 15). The Applicant is not intending to extinguish any rights belonging to NGET.</p> <p>Given the protection afforded by the protective provisions and associated side agreement, the Applicant considers that the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of NGET's undertaking.</p>
13/14	Environment Agency	<p>The Environment Agency submitted a representation in respect of the DCO application [RR-015].</p> <p>The final Statement of Common Ground [REP6-018] confirms that all matters are agreed between the Applicant and the Environment Agency. The SoCG</p>	<p>Agreed protective provisions for the benefit of the Environment Agency are included at Part 8 of Schedule 15 of the final draft DCO submitted at Deadline 6.</p> <p>The Applicant considers that through the protection afforded by the protective provisions, the compulsory acquisitions provisions in the draft DCO can be granted without serious detriment to the carrying on of the Environment Agency's</p>

		acknowledges that the DCO also includes protective provisions at Part 8 of Schedule 15 of the draft DCO. The Environment Agency has confirmed that these are agreed. Therefore, the Applicant does not consider that s127 of the PA 2008 is triggered because any objection is considered withdrawn by virtue of the SoCG.	undertaking. The content of the signed SoCG with the Environment Agency demonstrates that its representation has been withdrawn.
10/7, 11/8	Exolum Pipeline System Limited	Exolum has withdrawn its representation [REP6-058] and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of Exolum are included at Part 12 of Schedule 15 of the final draft DCO submitted at Deadline 6.
12/11, 12/14, 12/15, 15/10	Uniper UK Limited	Uniper did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	Protective provisions for of electricity, gas, water and sewerage undertakers are included at Part 1 of Schedule 15 of the final draft DCO submitted at Deadline 6. In any event these will operate to protect Uniper's interests as a licence holder under the Electricity Act 1989, although the Applicant continues to engage with Uniper and will update the ExA and/or Secretary of State if necessary and in due course.
1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 2/2, 2/7, 2/8, 3/1, 3/2, 3/3, 3/4, 3/6, 3/7, 5/3, 5/4, 5/5, 5/6, 5/7, 5/9, 6/1, 6/3, 6/12, 6/13, 6/16, 7/2, 7/3, 8/1, 8/3, 9/1, 9/2, 9/3, 10/1, 10/2, 10/3, 10/4, 10/5, 10/16, 11/1, 11/2, 11/3, 11/4, 11/6, 11/7, 12/7, 12/9, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/24	Northern Powergrid (Yorkshire) Plc	Northern Powergrid has withdrawn its representation [AS-029] and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of Northern Powergrid are included at Part 16 of Schedule 15 of the final draft DCO submitted at Deadline 6.

APPENDIX 2

The Applicant's responses to the MMO's comments on the DML

DML Section	Current wording	MMO's without prejudice comments	Applicant's response
Part 1 Licensed Marine Activities			
(1) Interpretation	Add provision	"condition" means a condition in Part 2 of this licence;	Agreed
(1) Interpretation	Add provision	"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;	Agreed
(1) Interpretation	"licence holder" means the undertaker and any agent, contractor or sub-contractor acting on its behalf;	The MMO request that this is deleted.	The Applicant considers this deletion to be less beneficial to the MMO. The applicant's definition includes not just the undertaker but also agents, contractors or sub-contractors acting on its behalf, ensuring that it is clear who has the benefit of the licence and who it may be enforced against. This is consistent with conditions 9 and 10 (notifications and inspections), which require notice of the undertaker's agents, contractors or sub-contractors to be served on the MMO. Therefore, read together a definition including these parties and clauses 9 and 10, improves clarity and enforceability.
(1) Interpretation	"MMO" means the Marine Management Agency, the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;	"Marine Management Organisation" or "MMO" means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor in function;	Agreed
(2) Addresses for notices	(1)(a) Marine Management Organisation Marine Licensing Lancaster house Newcastle	Marine Management Organisation Marine Licensing Team Lancaster House Hampshire Court Newcastle Business	Agreed

	Business Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032; and (1)(b) Marine Management Organisation Beverley Office First Floor Crosshill House Beverley HU17 9JB Email: beverley@marinemanagement.org.uk Phone: 0208 026 0519	Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032	
(3) Details of licensed marine activities	3.(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which— (a) form part of, or are related to, the authorised development; and (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.	As set out above in Section 5 this should set out clearly the activities as defined in S.66 of the 2009 Act.	The Applicant considers the licensed activities are clearly defined in paragraph 3 of Part 1 of the DML, the form and content of which is based on Part 1 of the Cleve Hill Solar Farm Order 2020.
(3) Details of licensed marine activities	Add provision	MMO request it is made clear in this section how long the licence will last.	It is not standard practice to time limit DMLs and paragraph 3(3) of Part 1 is clear that the licence applies to construction, operation and maintenance and decommissioning of Work No. 4B.
(3) Details of licensed marine activities	5. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 35 (consent to transfer the benefit of the Order).	This provision needs to be removed, along with the other sections of Article 5 of the DCO - See Section 5.	The Applicant considers this provision to be necessary and justified, as the Order makes clear provision for the transfer of the DML with consents of the Secretary of State in consultation with the MMO. The provision is well precedented, including in the Cleve Hill Solar Farm Order 2020.
(3) Details of licensed marine activities	6. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may	MMO requests that the following is added: <i>“subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different</i>	No objection to the principle of this provision although suggest it is unnecessary due to paragraph 7 of Part 1 of the DML, which already requires amendments or variations to be in accordance with the principles and assessments in

	subsequently be approved in writing by the MMO.	<i>environmental effects to those assessed in the environmental information.</i>	the environmental statement. It should be noted that the term “environmental information” is not used in the draft DCO/DML and the appropriate term is the environmental statement.
(3) Details of licensed marine activities	7. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	MMO requests that this is updated to state: “... <i>satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.</i> ”	Agreed that the reference to “relevant planning authority” should be to “the MMO”.
Part 2 Conditions			
Design parameters	Add provision	This should provide the worst-case scenario details of the licensable activities.	The licensable activities are described in paragraph 3 of Part 1, the form and content of which is based on Part 1 of the Cleve Hill Solar Farm Order 2020.
Title	Notifications regarding licensed activities	Notifications and inspections	Agreed
Notifications and inspections	8. The licence holder must inform the MMO in writing of the commencement of the first licensed activity at least 24 hours prior to such commencement.	8. The undertaker must inform the MMO at both addresses of Paragraph 2, in writing of the commencement of the first licensed activity at least five days prior to such commencement.	Agreed to amend 24 hours to five days. The MMO has however suggested removing the second address for service in its amendments above and so reference to “both addresses” does not make sense.
Notifications and inspections	9.—(1) The licence holder must inform the MMO of the name and function of any agent or contractor appointed to engage in any licensed activity not less than 24 hours before the commencement of the licensed activity in question. (2) Any changes to details supplied under sub-paragraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed	The following suggestions are for changes to improve clarity but note also change to 24 hours’ notice before carrying out activity, rather than a week after appointment 9. (1) The undertaker must provide the name, address and function of any agent, contractor or subcontractor that will carry	The Applicant is content with the stylistic changes proposed by the MMO.

	activity in question. (3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.	out any licenced activity listed in this license on behalf of the undertaker to the MMO in writing no less than 24 hours before the agent, contractor or subcontractor carries out any licensed activity; and (2) Any changes to the name and function of the specified agent, contractor or subcontractor that will carry out the specified licenced activities must be notified to the MMO in writing prior to the agent, contractor or subcontractor carrying out the licensed activity. (3) Only those persons notified to the MMO in accordance with paragraph (1) or (2) are permitted to carry out the licensed activities.	
Notifications and inspections	10. The licence holder must ensure that a copy of this Schedule has been read and understood by any agents and contractors that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 9	10. (1) The undertaker must ensure that— (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to all agents and contractors notified to the MMO in accordance with condition 9; (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.	The Applicant is content with the stylistic amendments contained in 10(1)(a) but considers 10(1)(b) to be unworkable, as the MMO would have to receive a notification from every agent and contractor employed in relation to the licensable activities. So far as the Applicant is aware there is no process or precedent for this and it is unclear how the MMO expects this to operate in practice. Given the licence and provision will bind the undertaker then it is considered unnecessary.
Notifications and inspections	11. Copies of this Schedule must be made available for inspection at the following locations— (a) the licence holder's registered office; and (b) during the construction of the authorised development only, at any site office which has been provided for the purposes of the construction or maintenance or decommissioning of the authorised development.	11. Copies of this licence must also be available for inspection at the following locations— (a) the undertaker's registered address; and (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits.	The Applicant is content with the stylistic changes proposed by the MMO.
Notifications and inspections	Add provision	12. The documents referred to in subparagraph (11)(a) must be available for	Agreed.

		inspection by an authorised enforcement officer at the locations set out in subparagraph (11)(b) above.	
Notifications and inspections	Add provision	13. The undertaker must provide access, and if necessary appropriate transportation, to the construction site or any other associated works to facilitate any inspection that the MMO considers necessary to inspect the works during construction, operation and decommissioning of the authorised scheme.	Agreed.
Pollution prevention	12. The licence holder must— (a) not discharge waste concrete slurry or wash water from concrete, or cement into the marine environment, and where practicable, site concrete and cement mixing and washing areas at least 10 metres away from the marine environment and any surface water drain to minimise the risk of run off entering the marine environment;	12. The undertaker must - (a) ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained and at least 10 metres away from the marine environment and any surface water drain to prevent run off entering the water through the freeing ports.	The Applicant considers that these changes are unnecessary and the original drafting, which is preceded in the Cleve Hill Solar Farm Order 2020, is preferred.
Pollution prevention	(b) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding or storage of 110% of the total volume of all reservoirs and containers;	No updates required	-
Pollution prevention	(c) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team (by telephone, within office hours on 0300 200 2024, or outside office hours on 07770 977 825, and at all times, if no response to calls to those numbers, on 0345 051 8486 or via email using dispersants@marinemanagement.org.uk within 12 hours of the spill occurring;	No updates required	-
Pollution prevention	(d) store all waste in designated areas that are isolated from surface water drains and open water and are bunded;	No updates required	-

Pollution prevention	(e) use suitable protective sheeting to prevent dust, debris (including paints and solvents) and rebounded or windblown concrete from entering the water environment, and rebounded material must be cleared away before the sheeting is removed;	No updates required	-
Pollution prevention	(f) ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with either guidelines approved by the Health and Safety Executive of the Environment Agency;	(f) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines;	Agreed
Pollution prevention	(g) not use priority substances and polluting chemicals listed under the Environmental Quality Standards Directive during works.	No updates required	-
Pre-construction plans and documentation	Add provision	(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—	Agreed
Pre-construction plans and documentation	Add provision	(a) A design plan - the detail required is dependent on the activities required.	Agreed with principle but drafting unspecific. Suggested compromise: “(a) A design plan, detailing the proposed location, parameters and arrangement of the licensed activities”
Pre-construction plans and documentation	Add provision	(b) A construction programme to include details of— (i) the proposed construction start date; (ii) proposed timings for mobilisation of plant delivery of materials and installation works; (iii) an indicative written construction programme for activities including maintenance and decommissioning	Agreed
Post-construction	13. The licence holder must remove all temporary structures, waste and debris associated with the licensed activities within 6	13. The undertaker must remove all temporary structures, waste and debris associated with the licensed activities	This suggested wording remains as proposed by the Applicant. Agreed.

	weeks following completion of the final construction activity.	within 6 weeks following completion of the final construction activity.	
Post-construction	Add provision	1) The undertaker must submit a close out report to the MMO [a]s of the date of completion of construction. The close out report must confirm the date of completion of construction. (2) Following completion of construction, no further construction activities can be undertaken under this licence	Agreed.
Maintenance	14.—(1) Unless otherwise agreed by the MMO, the maintenance activities may not commence until a maintenance plan has been approved in writing by the MMO. (2) The maintenance plan must be submitted at least 6 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used. (3) Maintenance activities must be undertaken in accordance with the agreed plan.	The MMO requests this is updated to the following condition - these activities must be clearly stated within Part 1, Paragraph 3. 14.—(1) Unless otherwise agreed by the MMO, the maintenance activities may not commence until a maintenance plan has been approved in writing by the MMO. (2) The maintenance plan must be submitted at least 13 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used. (3) Maintenance activities must be undertaken in accordance with the agreed plan.	The Applicant considers the licensed activities are adequately defined in Part 1. The Applicant considers six weeks is an appropriate time period, as preceded in the Cleve Hill Solar Farm Order 2023.
Decommissioning	15.—(1) Unless otherwise agreed by the MMO, the decommissioning activities may not commence until a decommissioning plan has been approved in writing by the MMO. (2) The decommissioning plan must be submitted at least 6 weeks prior to the commencement of any decommissioning activity, and must include details of the decommissioning activities required including location, duration, timings, methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan.	15.—(1) Unless otherwise agreed by the MMO, the decommissioning activities may not commence until a decommissioning plan has been approved in writing by the MMO. (2) The decommissioning plan must be submitted at least 13 weeks prior to the commencement of any decommissioning activity, and must include details of the decommissioning activities required including location, duration, timings, methodology and materials to be used. (3) Decommissioning activities must be undertaken in accordance with the agreed plan	The Applicant considers six weeks is an appropriate time period, as preceded in the Cleve Hill Solar Farm Order 2023.

REFERENCES

- 2-1: Energy White Paper: Powering our net zero future (December 2020). Department for Energy Security and Net Zero and Department for Business, Energy & Industrial Strategy.
- 2-2: Overarching National Policy Statement for Energy (EN-1) (November 2023). Department for Energy Security and Net Zero.
- 2-3: National Policy Statement for Renewable Energy Infrastructure (EN-3) (November 2023). Department for Energy Security and Net Zero.
- 3-1: "*We didn't turn the page on the fossil fuel era, but this outcome is the beginning of the end*": UN Climate Change Executive Secretary at COP28 Closing. (December 2023) United Nations Framework Convention on Climate Change.
- 3-2: Climate Change Committee: 2023 Progress Report to Parliament. (June 2023) CCC.
- 3-3: British Energy Security Strategy (April 2022). Department for Business, Energy and Industrial Strategy, Department for Energy Security & Net Zero and Prime Minister's Office, 10 Downing Street.
- 3-4: Powering Up Britain (April 2023). Department for Energy Security and Net Zero.
- 3-5: The UK carbon capture, usage and storage (CCUS) deployment pathway: an action plan. (November 2018) Department for Energy Security and Net Zero and Department for Business, Energy and Industrial Strategy.
- 3-6: Hydrogen Production Business Model / Net Zero Hydrogen Fund: HAR1 successful projects. (December 2023) Department for Energy Security and Net Zero.
- 3-7: Electricity networks: connections action plan. (November 2023) Department for Energy Security & Net Zero and Ofgem.
- 6-1: Advice Note Nine: Rochdale Envelope. (July 2018) The Planning Inspectorate.