

West Burton Solar Project

Written Summary of the Applicant's Oral Submissions & Responses at Issue Specific Hearing 2 and Responses to Action Points

Prepared by: Pinsent Masons LLP

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The Infrastructure Planning (Examination Procedure) Rules 2010: 8(1)(c)



Issue Sheet

Report Prepared for: West Burton Solar Project Ltd.
Examination Deadline 2

Issue Specific Hearing 2 on 23 January 2024 The Draft Development Consent Order

Prepared by:

Pinsent Masons LLP

Agenda Item	Comments
<p>1. WELCOME, OPENING REMARKS AND INTRODUCTIONS</p> <p>The Examining Authority (ExA) welcomed participants and lead introductions and the public livestream and recording started.</p>	<p>The ExA introduced the purpose of the hearing and the following parties introduced themselves:</p> <p><u>The Applicant</u></p> <ul style="list-style-type: none"> • Claire Brodrick, Legal Director at Pinsent Masons LLP (solicitors for the Applicant, West Burton Solar Project Limited) • Eve Browning, Senior Project Development Manager at Island Green Power • Tara Sethi, EIA Director at Lanpro (planning and EIA consultants for the Applicant) (attending via Teams) • Jane Crichton, Associate Planning Director at Lanpro (attending via Teams) <p><u>Lincolnshire County Council</u></p> <ul style="list-style-type: none"> • Neil McBride, Head of Planning • Stephanie Hall, Counsel at Kings Chambers • Martha Rees, Senior Solicitor, Legal Services Lincolnshire <p><u>West Lindsey District Council</u></p> <ul style="list-style-type: none"> • Shemuel Sheikh, Counsel, Kings Chambers • Russell Clarkson, Development Management Team Manager • Alex Blake, Associate Director, Atkins <p><u>7000 Acres</u></p> <ul style="list-style-type: none"> • Mark Prior <p><u>Local residents</u></p> <ul style="list-style-type: none"> • Simon Skelton • Stephen Spence, Chair of Marton and Gate Burton Parish Council (Mr Spence introduced himself at agenda item 7)
<p>2. PURPOSE OF THE ISSUE SPECIFIC HEARING AND HOW IT WILL BE CONDUCTED</p>	<p>The ExA set out details of how the hearing would be conducted.</p>
<p>3. APPLICANT'S UPDATE: RATIONALE FOR CHANGE REQUEST</p> <p>Noting the Applicant's notification to submit a Change Request Application which was submitted to the</p>	<p>Ms Brodrick noted that the Change Application has been submitted, including the Change Application and Consultation Report [AS-056] which details the changes and the additional information submitted with the application.</p> <p>The changes have been identified following discussions with key statutory undertakers and stakeholders and comprise:</p>

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<p>Planning Inspectorate on 3 January 2024, the Applicant was asked to set out the nature and implications of the changes anticipated.</p>	<p>Change 1: Access to West Burton 1 from A1500</p> <p>Change 1 comprises an extension to the Order Limits along the highway from the West Burton 1 Site to the A1500 Tillbridge Lane, to the north of Broxholme in order to facilitate access to the Site during the construction phase. This has come about through discussions between the Applicant and Lincolnshire County Council (LCC) Highways, which identified that there may be a need to create temporary passing places.</p> <p>Change 2: Cable Corridor Widening, Stow Park</p> <p>Change 2 comprises an extension to the Order Limits to the east of the Lincoln-Gainsborough railway line within Stow Park. This is to allow flexibility for the micro siting of the Cable Route Corridor connecting the West Burton 2 and West Burton 3 sites, required as a result of a proposal by Luminous Energy to develop a smaller solar park at Stow Park Farm. A scoping report for Stow Park Farm was submitted on 6 December 2023 by Luminous Energy (which is a Town and Country Planning Act 1990 development). The Applicant has been working with Luminous Energy to make sure that the projects can co-exist, should permission be granted for both.</p> <p>Change 3: West Burton 3 Railway Crossing</p> <p>Change 3 comprises an extension to the Order Limits along the Lincoln - Gainsborough railway line within the West Burton 3 Site. This has arisen following discussions about the design of the crossing with Network Rail and site surveys that have been undertaken. The Order Limits have therefore been extended to allow flexibility in relation to the method of constructing the cable under the railway, using HDD.</p> <p>Change 4: Visibility splay at West Burton Cable Route Corridor Access AC110</p> <p>Change 4 relates to an extension of the visibility splay at access AC110 along the A156 High Street in Marton in proximity to the Cable Route Corridor. This is to ensure that construction access can be undertaken and so that the alignment of the splay will now be the same for each of the Cottam, West Burton and Gate Burton projects.</p> <p>Change 5: Access to West Burton Power Station from Gainsborough Road</p> <p>Change 5 is as a result of discussions with West Burton power station owners, EDF. It comprises an extension to the Order Limits to include the existing main vehicular access road to West Burton Power Station from Gainsborough Road in order to allow for the installation of the grid connection works. No physical works are proposed, the change allows the Applicant the ability to use the existing road in that location.</p> <p>Because the Change Application includes a request seeking powers of compulsory acquisition and temporary possession over the additional land, the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the 'CA Regulations') are considered to apply to this Change Application, and the application will be made in compliance with the CA Regulations, should it be accepted.</p> <p>The Change Application is accompanied by a Supporting Environmental Information Report ('SEIR') [AS-057] that considers the conclusions of the Environmental Statement ([APP-038 to APP-061, REP1-012 and REP3-010]) in relation to the proposed changes, and in particular whether there are any changes to potential significant effects compared to those reported in the Environmental Statement submitted with the DCO application. The SEIR concludes that there are no new or different likely significant environmental effects as a result of the 5 proposed changes.</p> <p>In response to the ExA's question relating to the Change Application and Consultation Report [AS-056], which noted that the document does not contain all consultation responses on the change request, Ms Brodrick referred to Table 4.2 in the Report [AS-056] which details the discussions with landowners and other parties as well as the additional engagement with Network Rail and EDF. This engagement has been ongoing, rather than being a specific</p>

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	<p>request for a written response in respect of the change request itself. She noted that if the change request is accepted, the parties will be notified in accordance with the CA Regulations and they will have the opportunity to submit a formal representation. Ms Brodrick added that there is an agreed statement that was submitted on behalf of EDF, included as Appendix 2 to the Report [AS-056].</p> <p>The ExA noted that they would aim to come to a view before the end of this week on whether to accept the change application, and that if it is accepted, they would request that the Applicant progress with the requirements for consultation under the CA Regulations expediently.</p> <p>Ms Brodrick responded to note the ExA's comments, and flagged that an indicative timetable, allowing for a long period for the ExA to accept the change application request, had been included in the application. She noted that the timetable could be brought forward if a decision is made earlier, but noted the need for local newspaper notices to be published on a Thursday.</p> <p><i>Post hearing note: The Applicant's Change Application has since been accepted by the ExA, and is being progressed in accordance with the timetable set out in Annex A of the ExA's Rule 8(3) and Rule 9 letter [PD-011]. Please see Action 11 in the table below.</i></p>
<p>4. APPLICANT'S UPDATE</p> <p>The Applicant will be asked to provide a brief update on any changes that have been made to the original draft DCO and the Schedules.</p> <p>Applicant will be asked to provide an update on any proposed changes to Version C of the dDCO, including setting out any expected changes it anticipates will be required to align the dDCO with other DCOs currently being examined.</p>	<p>The ExA introduced the agenda item, noting the desire for consistency between this DCO and the DCOs for the other local solar NSIPs, and requesting an update on any changes that have been made to the original draft DCO and the Schedules.</p> <p>Ms Brodrick responded that a number of changes have been made to the original draft DCO as compared to the latest version of the DCO [EX4/WB3.1_E]. The reason for and nature of each change is set out in the Schedule of Changes [EX4/WB8.1.8_C], in particular in Table 3.1. She noted that the table also sets out whether the request for the change came about from the Applicant themselves, from the ExA or any other stakeholder (including the local authorities). She added that that table also sets out the rationale for the change, and whether it has been made to ensure consistency with the other draft solar DCOs being put forward in Lincolnshire.</p> <p>Ms Brodrick noted that the changes have been, for example, as a result of comments from the Canal and River Trust and the Environment Agency relating to the disapplication of legislative provisions in article 6 of the draft DCO [EX4/WB3.1_E]. A number of changes have also been made to terminology to reflect the Secretary of State's preferred drafting. For example, references to temporary prohibition or restriction of use have been included, rather than the use of the words "stopping up". This is a general drafting change being seen across all different types of DCO.</p> <p>She also noted that changes have been made to Article 38 (felling or lopping of trees and removal of hedgerows) in response to comments made by Interested Parties, to clarify that the powers can only be exercised in accordance with the agreed Landscape and Ecological Management Plan [EX4/WB7.3_D].</p> <p>Ms Brodrick noted that, in respect of the requirements in Schedule 2 to the DCO [EX4/WB3.1_E], a key change relates to making clear which local authority will be the discharging authority for each requirement (i.e. which will have Lincolnshire County Council as the discharging authority and which will be West Lindsey District Council or Bassetlaw District Council), an approach which has been taken across the Cottam, Gate Burton and West Burton DCOs in response to requests from the local authorities.</p> <p>She added that the Applicant has also amended the decommissioning requirement (21) to specify that decommissioning must be no later than 60 years following the date of final commissioning, whereas the initial draft DCO [APP-017] contained no time limit.</p> <p>Ms Brodrick noted that the DCO schedules relating to highways powers have been updated as and when plans have changed, for example, when an access has been removed.</p> <p>She noted that Schedule 16 (protective provisions) has been amended to include the latest versions of protective provisions as these have been negotiated with Interested Parties.</p>

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	<p>Ms Brodrick further noted that Schedule 17 (procedure for discharge of requirements) has been updated to reflect ongoing discussions with the local authorities in respect of the process for discharge requirements. She noted there had been amendments to the timeframes in which an application needs to be considered and the fee that is payable for the discharge. She reiterated that all of the changes set out above are detailed in the Schedule of Changes.</p> <p>The ExA requested that the Schedule of Changes [EX4/WB8.1.8_C] be reviewed, noting that not all of the changes to Schedule 2 seemed to have been detailed. The ExA also requested that the Explanatory Memorandum ("EM") [EX4/WB3.2_C] be updated.</p> <p>Ms Brodrick responded that the Applicant would review the Schedule of Changes [EX4/WB8.1.8_C], with a view to adding more detail relating to the rationale for each change. She noted that in some cases, it just relates to a drafting preference of the Secretary of State, but that the Applicant would make clear where that is the case. In respect of the EM, she noted that a version was provided with the Change Application, and that a number of the changes are tweaks to the drafting rather than changes to the purpose of the articles. The result of this is that there is not always a need to update the EM when a change is made.</p> <p>Ms Brodrick agreed that an EM would be provided for Deadline 4, but noted there might not be that many changes to it. She also noted that an updated EM would be provided at the final examination deadline, which would take into account drafting preferences from the most recently granted DCOs. She noted that the Sunnica DCO application is due to be decided in March, and that once it is, a review will be undertaken to account for any drafting preferences of the Secretary of State evident in that DCO.</p> <p><i>Post hearing note: an updated Explanatory Memorandum has been provided at Deadline 4 [EX4/WB3.2_C]. In addition, the Schedule of Changes has been reviewed and updated to explain in greater detail the rationale behind each change to the DCO [EX4/WB8.1.8_C]. Please see Actions 1 and 2 in the table below.</i></p> <p>In response to the ExA's question regarding anticipated further changes to the DCO, Ms Brodrick responded that there was not an expectation of large changes to align with other DCOs. She noted that if the Change Application is accepted, this will be incorporated into the Deadline 4 DCO [EX4/WB3.1_E]. She also noted that the Applicant will be updating Schedules 4 to 8, which relate to streets and highway powers, to make sure they accurately reflect the most recent versions of the Streets Plan [EX4/WB2.11_C]. That review is ongoing and will be completed for Deadline 4.</p> <p><i>Post hearing note: The review of Schedules 4 to 8 of the DCO was not completed in time for the amendments to be included in the Deadline 4 version of the DCO. In order to avoid confusion, the Applicant has not included any changes to Schedules 4 to 8 in the Deadline 4 version of the DCO. The updates will be included in the DCO provided at Deadline 5.</i></p> <p>Ms Brodrick further noted that the Deadline 4 version of the DCO [EX4/WB3.1_E] is also likely to include some further amendments to the protective provisions in Schedule 16, as negotiations progress with statutory undertakers.</p> <p>Finally, she noted that the local authorities had requested in the Cottam Solar Project examination that some amendments were made to the drafting of Schedule 17 in relation to fees payable for the discharge of requirements. She confirmed that Schedule 17 would be updated to reflect LCC's preferred approach to the payment of fees, in alignment with the Cottam Solar Project DCO.</p> <p><i>Post hearing note: Updates to Schedule 16 (protective provisions) and Schedule 17 (procedure for discharge of requirements) have also been made in the Deadline 4 version of the DCO [EX4/WB2.11_C]. All of the amendments are described in the Schedule of Changes [EX4/WB8.1.8_C].</i></p>
<p>5. MAIN DISCUSSION POINTS</p> <p>A. Article 5 (Power to maintain the authorised development):</p>	<p>Ms Brodrick responded to the ExA introducing the agenda item by stating that, as set out in the Applicant's response to the Examining Authority's First Written Question 1.5.3 [REP3-038], the Applicant's position is that the definition of "maintain" is proportionate and consistent with the assessment undertaken in the Environmental Statement ([APP-038 to APP-061, REP1-012 and REP3-010]). She added that the definition used in the draft DCO</p>

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<p>discussion of the extent of the maintenance provisions.</p>	<p>[EX4/WB3.1_E] is also consistent with the definition used in the Longfield Solar Farm Order 2023, the most recent solar DCO granted by the Secretary of State. Ms Brodrick noted that the Applicant's position is that it is not necessary to repeat the wording in Article 5 of the DCO in the definition of "maintain", as the two are read together in statutory drafting. She added that Article 5(3) makes it clear that the power to maintain the authorised development does not authorise the carrying out of any works which are likely to give rise to materially new or materially different effects that have not been assessed in the Environmental Statement.</p> <p>Ms Brodrick noted that maintenance activities required for the Scheme are described in section 4.7 of Chapter 4: Scheme Description to the Environmental Statement [APP-042]. As set out in the Applicant's response to First Written Question 1.5.6 [REP3-038], any maintenance activities that are undertaken will be managed via the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D], which is secured by Requirement 7 of the DCO, and the Outline Operational Environmental Management Plan [REP3-022], which is secured by Requirement 14 of the DCO. Ms Brodrick added that the Outline Operational Environmental Management Plan sets out a number of topics where mitigation will be put in place, including waste (recycling of materials), and monitoring in relation to climate change and emissions.</p> <p>She added that, when submitting an application to discharge these requirements, paragraph 2(4) of Schedule 17 to the draft DCO [EX4/WB3.1_E] requires the Applicant to include a statement making it clear whether the subject matter is likely to give rise to any materially new or different environmental effects. Therefore, it is the Applicant's position that the definition of maintenance is constrained by the wording of Article 5 and the Requirements, so the Secretary of State and Local Planning Authorities can have confidence that the maintenance activities will accord with the activities that were assessed as part of the Environmental Statement.</p> <p>In response to the ExA asking whether the definition of "maintenance" in the draft DCO would enable the Applicant to replace the entirety of Work No. 1 (the solar PV panels), Ms Brodrick responded that the definition of maintain in the DCO states that it does not include the removal, reconstruction or replacement of the whole of the authorised development, so the Applicant could not replace the entirety of it. In terms of the individual Work Numbers, there is the ability to replace parts of them, provided it would not result in any materially new or materially different environmental effects. For example, in the Environmental Statement, a percentage of 0.4% panel replacements per year was assessed as part of the climate change assessment (Chapter 7 of the Environmental Statement, paragraph 7.8.52 [REP1-012]). She added that, if the Applicant wanted to replace more than this percentage per year, they would have to demonstrate that this would not lead to any materially new or different environmental effects. If it did, the Applicant would need to apply to change the DCO. So, whilst the definition is drafted quite widely, it is constrained by the need to not result in any materially new or different effects compared to those assessed in the Environmental Statement.</p> <p>In response to a further question from the ExA, Ms Brodrick responded that the applications for the discharge of requirements must state whether or not there are any new or different likely significant environmental effects anticipated (as required by paragraph 2(4) of Schedule 17 to the draft DCO [EX4/WB3.1_E]), which is a positive obligation on the Applicant to demonstrate that the final design and management plans are within the parameters that have been assessed. She further noted that the local authorities have the ability to request further information from the Applicant if it isn't clear to them whether or not there would be any new or different environmental effects (see paragraph 3 of Schedule 17 to the draft DCO [EX4/WB3.1_E]).</p> <p>She noted that, most importantly, it is automatically a criminal offence under the Planning Act 2008 not to comply with the requirements of a DCO. This means that if the Applicant undertook an activity outside of the terms of the DCO, it would constitute an offence. She concluded that this is regarded as the mechanism by which compliance with the DCO is ensured.</p> <p>In response to a further question from the ExA relating to the conclusions of the Environmental Statement, Ms Brodrick added that, if the Environmental Statements concludes that there are no residual effects relating to a particular topic, if there was a change to this conclusion when submitting an application to discharge the Requirement, this would need to be reported by the Applicant at the point of discharge, under paragraph 2(4) of Schedule 17 to the DCO [EX4/WB3.1_E], as this would constitute a materially new or different effect from that reported in the Environmental Statement.</p> <p>In response to submissions from Mr Prior requesting changes to the definition of "maintain", Ms Brodrick reiterated that the DCO [EX4/WB3.1_E] needs</p>

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	<p>to be read as a whole, and that the definitions must be read in the context of the power they relate to, taking into account that the exercise of those powers must be in compliance with the management plans listed in the requirements in Schedule 2. She noted that it is incorrect to say the DCO gives the Applicant a "blank cheque" to do what it pleases – the terms of the authorised development are highly regulated in the DCO. She further noted that this hearing is not related to the environmental assessments themselves, but she noted that the Applicant has responded in writing previously to the comments made around greenhouse gas emissions relating to maintenance which were raised by Mr Prior.</p> <p><i>Post hearing note: For the Applicant's response on the points raised by Mr Prior relating to the greenhouse gas emissions assessment for the maintenance of the Scheme and replacement of panels, please see the response to GEN-05 in the Applicant's Responses to Written Representations and Other Submissions at Deadline 1: Part 3 [REP3-036] and response to question 1.9.10 in Applicant's Responses to ExA First Written Questions [REP3-038]</i> In response to a further question from Mr Prior relating to the maintenance of drains and ditches as part of the Scheme, Ms Brodrick responded that the definition of "maintain" is wide enough to include maintenance of ditches and drains. The maintenance of these will be set out in the Outline Operational Environmental Management Plan [REP3-022]. She also referred to Requirement 11 of the draft DCO [EX4/WB3.1_E], which relates to the provision of a detailed surface water drainage scheme, substantially in accordance with the Outline Drainage Strategy [APP-089]. She added that the plans relate to the land within the Order Limits. In respect of the solar array sites, the Applicant has voluntary agreements with the landowners relating to the use and maintenance of the land. In respect of the Cable Route, there are provisions in the Outline Construction Environmental Management Plan [REP3-018] relating to interactions with drainage ditches that may be crossed by the Cable Route Corridor. Protective measures will be put in place to make sure there is not any damage caused or for the reinstatement of any drains that might be impacted during construction activities.</p>
<p>5. MAIN DISCUSSION POINTS</p> <p>B. Article 11 (Temporary prohibition or restriction of use of streets and public rights of way) and Article 14 (Agreement with street authorities): discussion to address matters raised by the local highway authority.</p>	<p>In response to the ExA introducing this item, Ms Brodrick responded that the power in Article 11 of the draft DCO [EX4/WB3.1_E] to prohibit the use of or alter or divert any street or public right of way has two elements to it. One is the ability to alter the streets that are set out in Schedule 6 (streets and public rights of way) to the DCO, with the requirement to consult with the streets authority or highway authority before doing so. In respect of other streets or public highways, consent would need to be obtained.</p> <p>She added that, in order to address the concerns that were raised in terms of ensuring that there was the correct level of information provided to the highway authority as would normally be the case for any works to public highways, the Applicant amended the Outline Construction Traffic Management Plan at Deadline 3 ([REP3-013], now [EX4/WB6.3.14.2_D]) to include a number of obligations to ensure that the final plans would include the level of technical detail required.</p> <p>She added that Section 3.5 of the Outline Construction Traffic Management Plan [EX4/WB6.3.14.2_D] requires the plan to include the typical information included in a section 278 agreement including a programme of works, technical drawings, health and safety documentation, safety audits and details of the contractor undertaking the works. Ms Brodrick noted that, as that document (the Outline Construction Traffic Management Plan) will need to be approved, the Applicant's position is that the approval mechanism is included in the discharge of the requirement, so there is no need for a separate requirement to obtain consent in the article itself.</p> <p>She added that, if the Highways Authority (LCC) would like to see anything additional included in the Outline Construction Traffic Management Plan [EX4/WB6.3.14.2_D], the Applicant is happy to consider this, and understands there will be further discussions between the Applicant and the Highways Authority.</p> <p>In response to comments from Ms Hall on behalf of LCC relating to traffic regulation, Articles 11 and 15 in the draft DCO [EX4/WB3.1_E], and the Outline Construction Traffic Management Plan [EX4/WB6.3.14.2_D], Ms Brodrick noted that the Applicant is happy to work with LCC to make amendments and ensure consistency between the DCO and the Outline Plan. She added that the purpose of the DCO regime is to provide a unified consenting regime for Nationally Significant Infrastructure Projects, to prevent a situation where, for such a large scheme, it is necessary for the Applicant to get multiple individual consents which have their own processes and timescales, when it could all be dealt with in the DCO itself.</p>

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	<p>Ms Brodrick added that the reason for the Applicant wanting the details of how any highways works will be managed to be in the DCO and its associated management plans is so that the approvals are subject to the process in Schedule 17 (procedure for discharge of requirements) of the draft DCO [EX4/WB3.1_E]. She added that, if the Applicant was going to proceed with LCC's preferred approach of dealing with consents for highways works outside of the DCO, the Applicant would need to make sure any consent sought under the highways powers would also be dealt with under timescales set out in Schedule 17, which could otherwise lead to delays to implementation of the Scheme. It is therefore the Applicant's preference for all consents to be dealt with through approval of the Construction Traffic Management Plan [EX4/WB6.3.14.2_D]. She confirmed that the Applicant is not seeking to undertake works without LCC's approval, rather it is the mechanism for approval which is under discussion.</p>
<p>5. MAIN DISCUSSION POINTS</p> <p>C. Article 38 (Felling or lopping of trees and removal of hedgerows): clarification of the updates to the provisions for hedgerow removal, with regard to the provisions of Advice Note 15, Section 22.</p>	<p>In response to the ExA introducing the agenda item and asking the Applicant to confirm whether it considered that it has complied with Section 22 of the Planning Inspectorate's Advice Note 15¹, Ms Brodrick explained that Section 22 sets out two ways that applicants can deal with hedgerow removals, to remove the requirement to obtain a separate consent under the Hedgerows Regulations 1997. Either a schedule or plan is provided identifying the hedgerows to be removed either in part or whole, or a DCO can include a general power, if the hedgerows cannot specifically be identified, specifying that hedgerows can be removed but subject to the later consent of the local authority. Ms Brodrick noted that the Applicant has adopted a hybrid approach in the drafting of Article 38 and Schedule 13 (hedgerows to be removed) of the draft DCO [EX4/WB3.1_E]. Due to the detailed design for the Cable Route Corridor not yet being known and the fact that the exact locations for the access points have not yet been finalised, the Applicant has allowed some flexibility as to where these gaps will be located in the hedgerows identified in Schedule 13 (hedgerows to be removed) of the draft DCO.</p> <p>Ms Brodrick added that the updated drafting of Article 38(4) makes clear that the extent of the hedgerow to be removed has to be as set out in the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D], which must be approved by the local authority pursuant to requirement 7 of the draft DCO [EX4/WB3.1_E]. She confirmed that the Applicant therefore considers that it has complied with the Advice Note, as where exact details of the hedgerows cannot be confirmed, any removals will be subject to later consent as part of the approval of the final version of the Landscape and Ecological Management Plan.</p> <p>In response to further questions from the ExA, Ms Brodrick noted that further detail has been added to section 1.2 of the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D], at Deadline 3 to clarify the approach. She noted that the indicative Hedgerow Removal Plans in Appendix C of the Outline Landscape and Ecological Management Plan sets out the locations of the access points that are going to be required both for the solar array sites and the Cable Route Corridor.</p> <p>She further noted that a number of other hedgerows are included (in Schedule 13 of the draft DCO) where minor works such as pruning of hedgerows along the side of highways are required to allow construction vehicles to proceed. Ms Brodrick added that, at this stage, it is unclear where these works will be required, and the power enables the Applicant to do these works without needing an additional consent under the Hedgerows Regulations 1997.</p> <p>She confirmed that details of these minor works will be set out in the final Landscape and Ecological Management Plan. She added that the Applicant did not consider it possible to provide indicative plans for these minor works at this stage; these could only be provided once more details are known about the exact construction vehicles to be used, and when the works will take place (as if it is the height of summer, the hedges will be at their fullest and may need more trimming back). However, she confirmed that details of where the complete removal of parts of hedgerows for access or during the operation of the Scheme are required, are set out in the indicative Hedgerow Removal Plans in Appendix C of the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D].</p>

¹ Planning Inspectorate Advice Note 15: Drafting Development Consent Orders (July 2018 (version 2)).

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	<p>Ms Brodrick noted that paragraphs 1.2.3 and 1.2.4 of the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D] specify the widths of hedgerow removals required during construction (between 3 and 7.1m) and during the operational period (between 3 and 6.5m), to provide more clarity as to the extent of hedgerow that can be removed. However, the Applicant does not know where exactly that removal will be along a stretch of hedgerow, and therefore the power in the DCO is drafted broadly, but is then limited by what is set out in the Landscape and Ecological Management Plan.</p> <p>In response to the ExA's question relating to Article 38(1), Ms Brodrick noted that this is a model provision, and that the power must be read in conjunction with the associated management plans. The obligations in these plans limit the exercise of the power to what is set out in those plans.</p>
<p>5. MAIN DISCUSSION POINTS</p> <p>D. Article 29 (Temporary use of land for constructing the authorised development) and Article 30 (Temporary use of land for maintaining the authorised development): what steps been taken to alert all landowners/occupiers of land within the Order limits of this provision.</p>	<p>In response to the ExA asking the Applicant to describe the suite of compulsory acquisition powers set out in Part 5 of the draft DCO [EX4/WB3.1_E], Ms Brodrick noted that the Applicant's response to first written question 1.5.17 [REP3-038] sets this out. She then explained that Article 20 is a general power allowing the Applicant to compulsorily acquire the Order Land, constrained by Article 20(2), which refers to Article 22 (compulsory acquisition of rights) and Article 29 (temporary use of land). Ms Brodrick noted that these articles contain standard drafting resulting in the undertaker only being able to compulsorily acquire the freehold of the land shown coloured pink on the Land Plans [EX4/WB2.2_C]. She added that in respect of land shown coloured blue on the Land Plans, the Applicant can only acquire rights and impose restrictions. In respect of the land shown coloured yellow on the Land Plans, the Applicant can only use temporary possession powers. She concluded that the general power to compulsorily acquire land is therefore limited.</p> <p>Ms Brodrick added that the reason for having this wider power to compulsorily acquire lesser rights in land is so that where the full extent of land shown coloured pink on the Land Plans is not required, rights over a lesser area than is shown on the plan can be acquired. The Applicant is therefore not compelled to acquire freehold title where lesser rights are sufficient, to reduce the impact. The same applies to temporary possession powers. She gave the example of constructing a linear cable route, where there will be a wider working area and then a narrower area of permanent acquisition. She added it is typical to use the temporary possession powers to construct the cables including the working area, but then only seek permanent rights over the actual area of land where the cable has been laid.</p> <p>In response to further questions from the ExA regarding the arrangement of the land power articles in the draft DCO [EX4/WB3.1_E], Ms Brodrick noted that, from a technical perspective, temporary possession is not compulsory acquisition, and this has been treated separately to compulsory acquisition powers since the DCO model provisions. She added that this is to make clear that there is a specific article that deals with the compulsory acquisition of rights, as distinct from compulsory acquisition of freehold. Ms Brodrick noted that the structure is preceded in numerous DCOs, and means that the various schedules to which the different powers relate can be referred to more easily. She noted that, for example, article 22 relates to Schedule 10 (land in which only new rights etc. may be acquired) which sets out the rights being sought in respect of each plot of "blue land", and noted that some plots are access rights only. She added that this is so that, for example, the Applicant does not have the power to install cables in places where it only needs access rights.</p> <p>In response to the ExA asking for clarification on the steps that have been taken to alert landowners or occupiers of the land within the order limits of the possibility of these new rights being sought as part of the DCO, Ms Brodrick responded that, as set out in the Statement of Reasons [EX4/WB4.1_B] and updates at each deadline, the Applicant is seeking voluntary agreements for rights required for the Scheme. She confirmed that the Applicant already has voluntary agreements in place over the main solar array sites, and that the Statement of Reasons [EX4/WB4.1_B] sets out why it is necessary to seek compulsory acquisition powers for the solar array sites to ensure there is no impediment to the delivery of the Scheme.</p> <p>Ms Brodrick added that, in terms of the Cable Route Corridor, the Applicant is confident that it will reach voluntary agreements for a permanent easement for the cable and rights for temporary construction with the vast majority of cable route landowners, as detailed in the Statement of Reasons [EX4/WB4.1_B].</p> <p>Ms Brodrick further noted, in terms of contact with landowners, that the use of compulsory acquisition and temporary possession powers was stated in the section 42 and section 48 notices sent to Affected Persons at statutory consultation stage. She added that the notices sent under section 56 of the</p>

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	<p>Planning Act 2008 when the Application was accepted for Examination also set out the powers of compulsory acquisition and temporary possession contained in the DCO [EX4/WB3.1_E]. She concluded that it is the Applicant's position is that all Affected Persons have therefore been made aware of the powers contained in the DCO.</p>
<p>5. MAIN DISCUSSION POINTS</p> <p>E. Article 49 (Crown Rights): clarification of the nature of and progress towards gaining consent for provisions.</p>	<p>In response to the ExA's question relating to Article 49, noting the amendments to the article made in the Revision C version of the DCO ([REP3-006], now [EX4/WB3.1_E]) Ms Brodrick responded that the Applicant is in discussions with the Crown Estate's solicitors regarding the Article and the need for section 135 consent. She noted that consent has been issued in relation to the Gate Burton project, which relates to the same land (as the crossing of the River Trent is part of the Shared Cable Route Corridor). She added that the Crown Estate seems to be dealing with the applications in order of priority, so it is expected that a response will soon be forthcoming on the Cottam project, before this Scheme.</p> <p>In response to the ExA querying the amended drafting added to article 49, Ms Brodrick confirmed that this additional drafting was requested in the consent letter for the Gate Burton project, so has also been included in this DCO in anticipation it will be requested for the Scheme too. She added that the Applicant remains confident that section 135 consent will be received, as it has been for Gate Burton. She noted that for the Gate Burton project consent was received just before the end of that Examination (on 30 November 2023). Ms Brodrick confirmed that the Applicant is hopeful consent will be received before the close of this Examination, but noted that on other projects, it has been closer to the point at which the Secretary of State made the decision on the project.</p>
<p>6. DRAFT DEVELOPMENT CONSENT ORDER – SCHEDULES</p> <p>A. Schedule 2 Requirement 5 Detailed design approval: discussion of why detailed design approval is confirmed to Work Nos 1,2 and 3.</p>	<p>In response to the ExA introducing this agenda item, Ms Brodrick responded that, as set out in the Applicant's response to First Written Question 1.5.21 [REP3-038], Requirement 5 of the draft DCO [EX4/WB3.1_E] is specifically designed to deal with the above ground design aspects of the Scheme. She added that other requirements deal with other aspects of the Scheme. She noted that, for example, Requirement 10 deals with fencing, and Requirement 10(4) states that fencing must be in accordance with the detail in the Concept Design Parameters and Principles [EX4/WB7.13_C].</p> <p>Ms Brodrick further noted that Requirement 7 of the draft DCO deals with detailed requirements for landscaping, adding that the Applicant would consider it to be duplication for details of the landscaping to be approved under Requirement 5 in addition to Requirement 7.</p> <p>Ms Brodrick added that for a NSIP of this scale, it is typical for parts of the project to be dealt with in stages. She added that, with fencing, for example, the fencing requirement (requirement 10) covers both the temporary fencing which will be in place during construction and the permanent fencing. However, the design detail for the fencing might not be known or available at the same time as the undertaker is seeking to discharge the external appearance of, for example, the inverters. She added that structuring the requirements like this gives the opportunity to deal with elements of the Scheme individually and to give clarity that, when submitting an application, it relates to each of the topics that are listed in the requirements. She concluded that this prevents the discharge of requirement 5 being cumbersome, as it is intended to deal with the design elements of the main aspects of the Scheme.</p>
<p>6. DRAFT DEVELOPMENT CONSENT ORDER – SCHEDULES</p> <p>B. Schedule 2 Requirement 9 Biodiversity Net Gain: consideration of the mechanisms by which the anticipated levels of BNG would be secured through the dDCO</p>	<p>In response to the ExA introducing this agenda item, Ms Brodrick responded that Biodiversity Net Gain (BNG) is an evolving area with different approaches being taken by different developers. She noted that it remains to be seen how the anticipated regulations will apply to nationally significant infrastructure projects, once they have been consulted on.</p> <p>Ms Brodrick confirmed that the Applicant is committed to delivering the enhancement measures set out in the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D]. She added that the Planning Statement [EX4/WB7.5_B] refers to the exercise that has been undertaken to establish how many units the enhancement measures equate to, based on the metric that was used at the time that exercise was undertaken. Whilst there is a commitment to delivering the enhancement measures, the Applicant has concerns that if the percentage of gain was referred to on the face of the DCO [EX4/WB3.1_E], and the metric or criteria changed by the time the Applicant came to discharge the requirement, it might not be able to comply with the fixed percentages. This would result in the need for a change to the DCO, despite the mitigation and enhancement measures already having been agreed with stakeholders. She concluded that the Applicant's position is that, because of the changing landscape for BNG, it is preferable not to have the specific</p>

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	<p>percentages mentioned on the face of the DCO.</p> <p>Ms Brodrick noted that there are a range of approaches being taken to BNG at present by DCO developers. Some are the same as the Applicant, some refer to a minimum of 10% (in accordance with the emerging legislative requirements, albeit this does not reflect what solar projects can usually deliver), some are including a specific percentage, and some are including a slightly lower percentage to mitigate against changes to the metric. She added the Applicant's view at the moment is that it is preferable not to have that specific percentage on the face of the DCO, but the commitment to delivering the enhancement measures and the weight that can be attributed to those enhancement measures being delivered is clearly set out in the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D].</p> <p>In response to comments from LCC, West Lindsey District Council (WLDC) and the ExA, Ms Brodrick confirmed that weight can be attributed to the delivery of the enhancement measures set out in the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D]. She added that consideration would need to be given as to whether it would be appropriate to give less weight to an enhancement measure that is being delivered just because it is not linked to a specific percentage at this particular point in time. She re-iterated that the Applicant is committed to delivering BNG and is keeping track of evolving practice. The inclusion of a particular percentage will be considered if necessary.</p> <p><i>Post hearing note: Please see the response to Action 10 in the table below.</i></p> <p>In response to the ExA's question regarding the use of "substantially in accordance with the outline landscape and ecological management plan" rather than the final plan in Requirement 9(2) of the draft DCO [EX4/WB3.1_E], Ms Brodrick noted this is because the Outline Landscape and Ecological Management Plan [EX4/WB7.3_D] has been submitted in outline form, so it would be inappropriate to fix this, as the final Landscape and Ecological Management Plan will contain greater detail. She noted that the Applicant will consider this wording to see if it can be more closely linked to the approval of the final Landscape and Ecological Management Plan pursuant to Requirement 7.</p> <p><i>Post hearing note: Please see the response to Action 10 in the table below.</i></p> <p>In response to the ExA's query relating to the removal of the word "maintained" in Requirement 11(4), Ms Brodrick noted this removed to ensure consistency with the other requirements which state plans must be "implemented as approved". She added that it is the Applicant's position that "implemented as approved" includes maintenance where the plan itself has ongoing maintenance obligations in it.</p>
<p>6. DRAFT DEVELOPMENT CONSENT ORDER – SCHEDULES</p> <p>C. Schedule 9 Deemed Marine Licence under the 2009 Act: update on discussions with the MMO.</p>	<p>In response to the ExA introducing the agenda item, Ms Brodrick explained that the location of the cable route crossing of the River Trent is where the river is tidal. Therefore, a Deemed Marine Licence is required unless an exemption applies. She added that at present it is envisaged that works proposed by this Scheme, the Cottam Solar Project and Gate Burton Solar Project (due to the Shared Cable Route Corridor and its location) would qualify for an exemption and not require a Marine Licence. However, there is no guarantee this exemption will still exist at the point of construction nor whether the criteria will be met. Ms Brodrick noted that the Marine Management Organisation (MMO) conceded this point in the Gate Burton examination. She added that to avoid impediment to the Scheme being delivered, in accordance with the principle of the DCO regime, it was concluded to be appropriate to include a Deemed Marine Licence in the draft DCO [EX4/WB3.1_E]. The Applicant's preference is therefore to include the Deemed Marine Licence in the DCO, primarily because of the time scales associated with separately obtaining a Marine Licence.</p> <p>Ms Brodrick added that the Secretary of State will take into account the comments made by the MMO and may decide to remove the Deemed Marine Licence. However, it is the Applicant's position that one should be included to ensure deliverability.</p> <p>Ms Brodrick noted that at Deadline 3, the MMO provided its comments on the Deemed Marine Licence on a without prejudice basis. The Deemed Marine Licence has been updated in Schedule 9 of the draft DCO [EX4/WB3.1_E], however some amendments were not considered necessary and the detail of this will be set out in the Schedule of Changes [EX4/WB8.1.8_C]. She added that the Applicant is hopeful that agreement will be reached with the MMO</p>

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	<p>on the wording of the Deemed Marine Licence in both this Examination and the Cottam Solar Project examination.</p> <p>Ms Brodrick added that the Applicant's position is that all of necessary information for a Deemed Marine Licence is set out in the DCO application, both in terms of the environmental assessment (particularly in relation to matters relating to hydrology), and the mitigation measures set out in the Outline Construction Environmental Management Plan [REP3-018]. She confirmed that the Applicant is proposing to submit a document which signposts to where all this environmental information can be found in the application.</p> <p>Ms Brodrick added that the drafting changes to the Deemed Marine Licence will be shared with the MMO prior to Deadline 4.</p> <p>Post hearing note: As noted above the Applicant has prepared a signposting document and submitted into Deadline 4 Technical Note on Horizontal Directional Drilling and Cabling under the River Trent [EX4/WB8.2.8]</p>
<p>6. DRAFT DEVELOPMENT CONSENT ORDER – SCHEDULES</p> <p>D. Schedule 16 Protective Provisions. The Applicant will be asked to provide an update progress between the parties, with an explanation of any important differences in view and timescales for resolution. In particular consideration will be given to provisions for:</p> <ul style="list-style-type: none"> a. Network Rail b. EDF c. Marine Management Organisation d. Canal and River Trust e. The Environment Agency f. Other parties with which protective provisions have not yet been agreed. 	<p>Ms Brodrick provided the following updates following the request from the ExA:</p> <ul style="list-style-type: none"> • Network Rail Infrastructure Limited (Network Rail): Work in relation to the property documents is ongoing, as set out in the Schedule of Progress [EX4/WB8.1.12_B]. She noted the importance of reaching agreement on the property documents in order to be able to agree not to exercise compulsory acquisition powers against Network Rail, which is part of their standard terms for their Framework Agreement. She confirmed that the Applicant's comments on the draft Framework Agreement have now been sent to Network Rail, which they are now reviewing, so the Applicant is hopeful agreement will be reached shortly. She added that the protective provisions included in the DCO [EX4/WB3.1_E] are being reviewed against Network Rail's most recent precedent protective provisions to consider if any amendments are required. • EDF Energy (Thermal Generation) Limited (EDF): Negotiations are ongoing, and the Applicant recently received EDF's preferred form of protective provisions. Ms Brodrick confirmed that the Applicant does not anticipate any effects on the demolition of West Burton power station, although it appreciates EDF's need for their interests to be protected. She noted that as can be seen from the change application, the Applicant is working very closely with EDF on the Scheme, and they are supportive of the change application and the use of access roads into the power station. She confirmed that the Applicant did not foresee any issues in principle, it is a case the parties needing to agree the drafting of the protective provisions. She noted that, as with the other protective provisions, these will limit the powers in the DCO to ensure there is no detriment to EDF's undertaking. In response to further questions from the ExA, Ms Brodrick noted that the cable route only goes through a very small amount of EDF's land (between the boundary and the National Grid substation). It is therefore the Applicant's position that the Scheme will not impact on the redevelopment plans for the wider site. She noted another solar DCO is anticipated on land immediately south of the power station, and noted that the Applicant is engaging with this developer, along with the other landowners in this area. • Canal and River Trust: The protective provisions included in Part 13 of Schedule 16 of the draft DCO submitted at Deadline 3 are in an agreed form [REP3-006] (now [EX4/WB3.1_E]). Ms Brodrick noted that the Applicant has taken on board the Canal and River Trust's comments on the drafting of the protective provisions, amendments required to Article 6 of the draft DCO, and amendments to the Concept Design Parameters and Principles [EX4/WB7.13_C]. She noted that each comment of the Canal and River Trust has now been addressed. It is anticipated that they will confirm at Deadline 4 that they have no outstanding issues. • Environment Agency: Discussions are ongoing regarding the Statement of Common Ground. As part of this, Ms Brodrick noted that the Applicant is anticipating comments from the Environment Agency's solicitors on the protective provisions included in the DCO (which is a version that has been included in other DCOs, so any changes are anticipated to be minor). • National Grid Electricity Transmission PLC: The Applicant has received template documents from National Grid, and is waiting for confirmation as to whether any bespoke provisions are required for this particular scheme.

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	<ul style="list-style-type: none"> • National Grid Electricity Distribution PLC: A similar position applies as above. The Applicant is reviewing precedent documents received from National Grid. • Northern Power Grid: The same position applies for Northern Power Grid as applies for National Grid. • Cadent Gas Limited: Negotiations are further progressed between Cadent and the Applicant. There are a couple of points outstanding on the draft side agreement, relating to indemnity and arbitration provisions. The drafting in relation to the approval of works etc. is all agreed. • Uniper: The Applicant is reviewing draft protective provisions sent by the undertaker. In particular, the Applicant is considering how these work with the EDF protective provisions to ensure that there is a consistency of approach in terms of how the any works affecting their apparatus need to be approved. • Exolum: The Applicant is reviewing draft projective provisions sent by the undertaker. <p>The Applicant remains confident that agreement will be reached with each of the statutory undertakers by the end of the examination.</p> <p><i>Post hearing note: Please refer to the Schedule of progress regarding Protective Provisions and Statutory Undertakers [EX4/WB8.1.14_B] for the latest updates on the progression of negotiations with the parties referred to above. In addition, please refer to the Statement of Commonality for details of the latest updates on the progress of discussions with affected parties with whom the Applicant is negotiating a Statement of Common Ground [EX4/WB8.1.11_A].</i></p>
<p>6. DRAFT DEVELOPMENT CONSENT ORDER – SCHEDULES</p> <p>E. Schedule 17 Procedure for discharge of Requirements: noting that these are bespoke provisions, the positions of the planning authorities and other consenting bodies will be clarified.</p>	<p>In response to the ExA introducing the agenda item, Ms Brodrick summarised changes made to Schedule 17:</p> <ul style="list-style-type: none"> • The time period for discharge of requirements has been increased to 10 weeks for all requirements (paragraph 2(2)). An earlier iteration had a 10 week discharge period for more complex requirements and a shorter period for the others. She noted that WLDC has requested a longer period, but that the Applicant considers this is sufficient to balance a proper review of the documents against the need to deliver the Scheme for the grid connection date. • In terms of deemed approval of requirements, she noted there are two separate mechanisms where the relevant planning authority does not provide a response within the relevant time period. Where an application has been submitted with a statement that there will be materially new or materially different environmental effects, there is deemed refusal (paragraph 2(5)). For applications where there are no materially new or materially different environmental effects, the position is that approval is deemed if the relevant planning authority fails to determine the application (paragraph 2(3)). Ms Brodrick noted that the Applicant considers this to be proportionate in the context of the need to deliver nationally significant infrastructure. She further noted that there are mechanisms for the local authorities to request more information (paragraph 3) or to refuse the application. • In relation to payment of fees (paragraph 5), Ms Brodrick noted that drafting had been included linking this to payments due under the Town and Country Planning Act Regime. LCC requested an alternative method setting out a prescribed fee for each requirement, with a different fee being payable for the requirements more akin to the consideration for an outline planning permission reserved matters approval. <p>In response to comments made by Mr Sheikh on behalf of WLDC which confirmed their position, Ms Brodrick responded that it would be helpful for the Applicant to understand why WLDC considers 16 weeks to be the period they need to approve the detailed design of the Scheme under requirement 5. Ms Brodrick gave examples of the type of details that would be being approved, such as final Battery Energy Storage System design. She noted that, whilst the Scheme is large, the details to be approved are not equivalent to a very detailed, complex mixed use development. She noted that 16 weeks is a very long time to determine such an application, particularly when considering there is a very constrained construction timetable in order to meet a</p>

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	<p>grid connection date of 2028.</p> <p>In response to comments made by WLDC regarding 10 weeks being acceptable if the deemed approach mechanism was removed, Ms Brodrick queried how such an approach would address the Applicant's concerns as this would mean the Applicant would be left having to appeal the non-approval of an application, which take a much longer period of time.</p>
<p>7. OPPORTUNITY FOR INTERESTED PARTIES TO COMMENT ON OTHER ASPECTS OF THE DDCO AND RAISE ANY MATTERS NOT COVERED IN ITEMS ABOVE.</p>	<p>In response to comments raised by Mr Spence relating the Cable Route Corridor around Marton and Gate Burton villages, Ms Brodrick responded that the Shared Cable Route Corridor has been designed to minimise the effects on local communities arising from the schemes in this area.</p> <p>She further noted that the Joint Report on Interrelationships [EX4/WB8.1.9_C] also details the steps that the Applicant and the other developers are taking to coordinate and sets out the cumulative effects of the schemes. A further updated version will be submitted at Deadline 4.</p> <p><i>Post hearing note: An updated version of the Joint Report on Interrelationships [EX4/WB8.1.9_C] was submitted at Deadline 4.</i></p> <p>Ms Brodrick explained that Section 7 of the Construction Traffic Management Plan [EX4/WB6.3.14.2_D] has been updated to refer to joint Construction Traffic Management Plans being produced if the construction periods overlap for this Scheme and the other schemes using the Shared Cable Route Corridor in order to reduce and manage any potential cumulative effects. Any joint Construction Traffic Management Plan would need to be approved by the local authorities prior to construction commencing. She noted that at present there is a degree of uncertainty as to whether all the projects will be consented and when they will be constructed. However, due to the grid connection dates for each scheme, some overlap is anticipated if they are all consented.</p> <p>West Lindsey District Council requested the following:</p> <ol style="list-style-type: none"> 1. Consideration of phasing requirement, as is included in the Mallard Pass Solar Farm draft Development Consent Order (Requirement 3). 2. The inclusion of the wording "implemented and maintained as approved" in the requirements relating to the management plans, referring to the draft Mallard Pass Solar Farm Order, the Longfield Solar Farm Order 2023, the draft Sunnica Energy Farm Order, the Little Crow Solar Park Order 2022 and the draft Gate Burton Energy Park Order as precedent. 3. Amendments to Requirement 21 (decommissioning) to change the operational phase time limit to 40 years, noting these relate to the environmental information submitted with the application and so would be considered further in the issue specific hearings taking place in February. It was agreed this matter could be dealt with at the issue specific hearings on environmental matters in February. <p>In response, Ms Brodrick stated that:</p> <ol style="list-style-type: none"> 1. The Applicant would take the point away regarding the Mallard Pass Solar Park drafting, to see if it would be relevant to this Scheme. She requested that West Lindsey District Council provide details of why they consider this provision would be helpful to the local authority, noting that the Scheme has not been assessed as a phased development. She noted that Section 2.3 of the Construction Environmental Management Plan [REP3-018] sets out an indicative timetable for the works at each site, which links to the construction programme in Chapter 4 of the ES [APP-042]. It is therefore intended that the Construction Environmental Management Plan will include detail on the construction programme. 2. It is the Applicant's position that the wording is not necessary. If this wording is included in the requirements, it is not clear if it is referring to maintenance of the plan or the maintenance provisions contained within the plan. Ms Brodrick noted that the preference is for the plan to set out the provisions for maintenance and monitoring, with the requirement then stating that the plan must be "implemented as approved." It is therefore the Applicant's position that, for clarity, the wording should remain as it currently is in the draft DCO.

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	Ms Hall on behalf of Lincolnshire County Council noted that LCC would provide some alternative drafting for Requirement 12 (archaeology). <i>Post hearing update: Please see Action 8 below. Requirement 2 in Schedule 2 to the draft DCO [EX4/WB3.1_E] has been updated to include the requirement that no part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to the relevant planning authorities.</i>
8. OTHER MATTERS	In response to a question from the ExA relating to changes to Schedule 7 (access to works) of the DCO, Ms Brodrick confirmed that there was a misalignment between the streets column and the access column in that Schedule, resulting in an error when the information was transposed into the SI template. She confirmed that the information on the associated plans was correct. She confirmed there have been no amendments to the locations of the accesses set out in Schedule 7.
9. REVIEW OF ACTIONS	Please see list of actions in the table below.

List of actions for the Applicant and other parties following the DCO Issue Specific Hearing 2 (23 January 2024)

No	Party	Action	Deadline	Applicant's response
1	The Applicant	Table 3.1 of Schedule of Changes to the DCO – Applicant to review and update to provide further detail on changes.	4	The Schedule of Changes has been reviewed and updated to explain in greater detail the rationale behind each change to the draft DCO [EX4/WB8.1.8_C].
2	The Applicant	Explanatory Memorandum to be updated.	4	An updated Explanatory Memorandum has been provided at Deadline 4 [EX4/WB3.2_C].
3	The Applicant	Applicant to check name of hedgerow plans/important hedgerow plan in Schedules 13 and 14 to ensure the same name is consistently used.	4	The Applicant has reviewed the draft DCO and the term “hedgerows plan” is consistently used.
4	The Applicant and LCC	Applicant and LCC to continue dialogue on Articles 11, 14 and 15 (those around the Construction Traffic Management Plan and relevant approvals).	Ongoing	An updated Construction Traffic Management Plan has been provided at Deadline 4 [EX4/WB6.3.14.2_D]
5	The Applicant	Applicant to provide the ExA with update on progress on discussions	4	Please refer to the Applicants response to the Marine Management Organisation in The Applicant's Response to

No	Party	Action	Deadline	Applicant's response
		with the Marine Management Organisation.		Deadline 2 and 3 Submissions [EX4/WB8.1.23] which has been provided at Deadline 4.
6	The Applicant	Applicant to provide update on the drafting of deemed approval timescales in Schedule 17.	4	The Applicant has reviewed Schedule 17 and considers that the drafting is reasonable and proportionate.
7	The Applicant	Applicant to consider inclusion of "maintenance provisions" in Schedule 2.	4	Please see the response against agenda item 7 above. The Applicant does not consider that there is a need for the drafting of the requirements in the draft DCO [EX4/WB3.1_E] to be updated.
8	The Applicant and WLDC	Applicant and WLDC to look at precedents for phasing requirements, understand purpose and review wording.	4	Requirement 2 in Schedule 2 to the draft DCO [EX4/WB3.1_E] has been updated to include the requirement that no part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to the relevant planning authorities.
9	LCC	LCC to provide alternative wording for Requirement 12.	4	To ensure there are no delays to construction, the Applicant's preference is for the WSI to contain the relevant obligations in respect of any further trial trenching considered by the Secretary of State to be necessary prior to commencement of construction. The Applicant and LCC are currently liaising on a without prejudice version of the WSI.
10	The Applicant	Ongoing action for Applicant to review approach within the DCO regarding BNG (consider percentage and review precedents).	Ongoing	In response to comments made by stakeholders and the ExA, the Applicant has considered its approach to the BNG requirement further. Whilst the Applicant has committed to delivering all of the enhancement measures set out in the OLEMP, the Applicant recognises that references to specific percentages may be helpful. However, for the reasons previously mentioned the Applicant has committed to a slightly lower percentage to take into account potential changes to the metric. This approach is consistent with the approach taken on the Mallard Pass Solar Farm. The Applicant has therefore updated the drafting of requirement 9 of the DCO to provide that: <i>"The biodiversity net gain strategy must include details of how the strategy</i>

No	Party	Action	Deadline	Applicant's response
				<i>will secure a minimum of 69.4% biodiversity net gain in habitat units, a minimum of 43.7% biodiversity net gain in hedgerow units and a minimum of 26.6% biodiversity net gain in river units for all of the authorised development during the operation of the authorised development, and the metric that has been used to calculate that those percentages will be reached."</i>
11	The Applicant	If change application is accepted, Applicant to progress consultation requirements expediently.	Ongoing	The Applicant's Change Application has since been accepted by the ExA and the Applicant has commenced the consultation requirements in accordance with the timetable set out in Annex A of the ExA's Rule 8(3) and Rule 9 letter [PD-011] .