

# Cottam Solar Project

## Written Summary of the Applicant's Oral Submissions & Responses at Issue Specific Hearing 1 (Draft DCO) and Responses to Action Points

Prepared by: Pinsent Masons LLP  
October 2023

PINS Reference: EN010133

Document Reference: EX1/C8.1.5

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





## Issue Sheet

**Report Prepared for: Cottam Solar Project Ltd.  
Examination Deadline 1**

### **Issue Specific Hearing 1 (Draft DCO) Written Summary of the Applicant's Oral Submissions and responses to Action Points**

**Prepared by:**

Pinsent Masons LLP

#	ExA Question / Item for discussion	Applicant's response
<b>Agenda Item 1 - Welcome, opening remarks and introductions</b>		
1	The Examining Authority (ExA) welcomed participants and read introductions and the public livestream and recording was started.	<p>The following parties introduced themselves:</p> <p><u>The Applicant</u></p> <ul style="list-style-type: none"> <li>• Gareth Phillips, Partner at Pinsent Masons LLP (solicitors for the Applicant)</li> <li>• Claire Brodrick, Legal Director at Pinsent Masons LLP</li> <li>• Eve Browning, Project Development Manager at Island Green Power</li> <li>• Iain Douglas, Planning Consultant at Lanpro Consultants</li> <li>• Dave Elvin, Head of Projects at Island Green Power</li> <li>• Ruth Taylor, Associate at Pinsent Masons LLP</li> </ul> <p><u>Lincolnshire County Council</u></p> <ul style="list-style-type: none"> <li>• Neil McBride, Head of Planning</li> <li>• Justine Proudler, Infrastructure Manager</li> <li>• Martha Rees, Senior Solicitor</li> </ul> <p><u>West Lindsey District Council</u></p> <ul style="list-style-type: none"> <li>• Shemuel Sheikh, Counsel, Kings Chambers</li> </ul> <p><u>Environment Agency</u></p> <ul style="list-style-type: none"> <li>• Keri Monger, Planning Specialist</li> </ul> <p><u>Canal and River Trust</u></p> <ul style="list-style-type: none"> <li>• Sophie Summers</li> <li>• Hazel Smith</li> </ul> <p><u>Trent Valley Internal Drainage Board</u></p> <ul style="list-style-type: none"> <li>• Emily Jackson</li> </ul>

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		<p><u>Sturton by Stow Parish Council</u></p> <ul style="list-style-type: none"> <li>• Carol Gilbert</li> </ul> <p><u>7000 Acres</u></p> <ul style="list-style-type: none"> <li>• Mark Prior</li> </ul> <p><u>Local residents</u></p> <ul style="list-style-type: none"> <li>• Simon Skelton</li> </ul>
<b>Agenda Item 2 - The purpose of the hearing and how it will be conducted</b>		
2	<p>The ExA introduced the hearing, including that:</p> <ul style="list-style-type: none"> <li>• the purpose of the hearing was for the ExA to examine the draft Development Consent Order (dDCO) and related matters, and to invite certain parties to make oral representations about them.</li> <li>• the hearing was subject to the powers of control of the ExA, as set out in the Planning Act 2008 and supporting legislation.</li> <li>• the ExA would invite parties to speak and would ask questions at relevant points on the agenda and when it otherwise considered necessary.</li> <li>• all comments, questions and answers were to be directed to the ExA and not directly to any other party.</li> </ul> <p>The ExA explained that individual affected persons will be addressed later in the process at the Compulsory Acquisition Hearings.</p> <p>This hearing would consider dDCO Revision A <b>[AS-012]</b>, submitted on 24 April 2023. The ExA explained that the Examination timetable provides that the Applicant will submit updates to the DCO and provides a date by which a Schedule of Changes will be submitted. The ExA will send the recommended DCO and recommendation</p>	n/a

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	report to the Secretary of State (SoS), and so must ensure that it is fit for purpose.	
<b>Agenda Item 3 - The purpose and overall structure of the dDCO</b>		
3a	<p>The ExA invited the Applicant to take up to 10 minutes to provide an overview of:</p> <ul style="list-style-type: none"> <li>• its overall approach for the dDCO.</li> <li>• a brief description of the structure of the dDCO, including the Schedules, explaining why each section is required.</li> <li>• the role of the Explanatory Memorandum (EM).</li> </ul>	<p><u>The overall approach to the DCO</u></p> <p>Ms Brodrick, on behalf of the Applicant, explained that the draft DCO (dDCO) [AS-012] is a statutory instrument and therefore a piece of legislation. It has been prepared in accordance with s120 of the Planning Act 2008 (the 2008 Act) taking into account the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 125 so far as these are relevant to the Scheme. She stated that all powers included within the dDCO fall within the scope of section 120 of, and Schedule 5 to, the 2008 Act.</p> <p>Ms Brodrick explained that the Applicant had taken into account PINS <b>Advice Note Fifteen: Drafting Development Consent Orders</b> and the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. Whilst there is no longer a requirement to have regard to the model provisions, the EM [APP-017] sets out where variations have been made to the model provisions and why they are relevant and necessary for the Scheme.</p> <p>The dDCO is very similar in form, content and structure to that of other energy DCOs including recent solar DCO schemes, including the Longfield Solar Farm Order 2023 which was made in July 2023.</p> <p>She explained that the form of the DCO is also similar to other solar draft DCOs that are at various stages of the Planning Act 2008 consenting process, including the Sunnica Solar Farm Order, which has recently been examined, and the recent DCO applications in the Lincolnshire area including the Mallard Pass Solar Farm and Gate Burton Energy Park (which are currently in Examination). The dDCO is also similar in form, content and structure to draft DCO for the West Burton Solar Project (for which the preliminary meeting opened on 7 September 2023). The Applicant considers that there are benefits for stakeholders, in particular the host authorities, for the draft DCOs in the Lincolnshire area to be in a similar form. However, Ms Brodrick explained that there will be certain provisions that are project or site specific.</p> <p><u>A brief description of the structure of the dDCO, including the Schedules, explaining why each section is required</u></p> <p>Ms Brodrick explained that the Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Scheme. This reflects the integrated consenting objective of the 2008 Act regime.</p> <p>The dDCO is split into 6 parts:</p> <ol style="list-style-type: none"> <li>a) <b>Part 1 (Preliminary):</b> includes definitions;</li> <li>b) <b>Part 2 (Principal Powers):</b> Articles 3 to 7 provide development consent for the Scheme, and allow it to be constructed, operated and maintained by the undertaker. Article 6 relates to the application and modification of certain legislative provisions to enable the Scheme to be constructed without impediment;</li> <li>c) <b>Part 3 (Streets):</b> Articles 8 to 15 provide the undertaker with a suite of powers in relation to street works and highways;</li> <li>d) <b>Part 4 (Supplemental Powers):</b> Articles 16 to 19 set out four supplemental powers relating to the discharge of water; the removal of human remains; undertaking protective works to buildings; and the authority to survey and investigate land;</li> <li>e) <b>Part 5 (Powers of Acquisition):</b> Articles 20 to 33 provide for the undertaker to be able to compulsorily acquire the Order Land, compulsorily acquire rights and impose restrictions over and within the Order Land, and to be able to temporarily use parts of the Order Land for the construction, operation and maintenance of the Scheme;</li> </ol>

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		<p>f) <b>Part 6 (Miscellaneous and General):</b> Articles 34 to 39 include various general provisions in relation to the Order, including provisions relating to how the benefit of the Order can be transferred to a person other than the undertaker; provisions relating to the certification of plans and documents relevant to the Order; arbitration and the protection of apparatus belonging to statutory undertakers through the protective provisions.</p> <p>There are then 17 Schedules to the Order.</p> <ul style="list-style-type: none"> <li>• <b>Schedule 1</b> sets out the description of the authorised development comprising the Scheme, split into 11 work numbers;</li> <li>• <b>Schedule 2</b> contains the requirements that apply to the Scheme (i.e. the controls that apply to the Order, similar to planning conditions);</li> <li>• <b>Schedule 3</b> relates to local legislation that is to be disapplied or modified to the extent required for the construction, operation and maintenance of the Scheme;</li> <li>• <b>Schedules 4 to 8</b> relate to the streets and highways powers;</li> <li>• <b>Schedule 9</b> is the deemed marine licence for the section of the grid connection under the River Trent;</li> <li>• <b>Schedule 10</b> relates to the compulsory acquisition powers and lists the plots and purpose for which new rights and restrictions are being sought;</li> <li>• <b>Schedule 11</b> is a standard schedule which modifies legislation relating to compulsory purchase to ensure it applies to the acquisition of rights;</li> <li>• <b>Schedule 12</b> relates to the temporary possession powers and lists the plots over which only temporary possession powers are being sought;</li> <li>• <b>Schedule 13</b> relates to the hedgerow powers;</li> <li>• <b>Schedule 14</b> lists documents to be certified;</li> <li>• <b>Schedule 15</b> sets out the arbitration rules and timescales in the event of any dispute;</li> <li>• <b>Schedule 16</b> includes protective provisions for the benefit of statutory undertakers and drainage authorities; and</li> <li>• <b>Schedule 17</b> is the process for discharging requirements under the Order.</li> </ul> <p><u>The role of the Explanatory Memorandum [APP-017]</u></p> <p>Ms Brodrick stated that the EM explains the purpose and effect of each article of, and the Schedules to, the dDCO, as required by Regulation 5(2)(c) of the APFP Regulations. This EM also explains why each article of, and Schedule to, the Order is required for the Scheme. She explained that, as previously mentioned, it also identifies and explains any departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, and sets out where there is precedent in other made DCOs for these drafting differences.</p> <p>Ms Brodrick stated that as with the dDCO, the EM is very similar in form, content and structure to those submitted for other recent solar DCO schemes. The Applicant considers that the EM for Cottam is clear, well-structured and easily navigable, with appropriate references, and therefore allows readers to clearly understand the reasoning behind the drafting of the DCO.</p>
3b	The ExA asked what the process would be for updating this dDCO in order to remain in line with the Gate Burton and Mallard Pass projects in the area as they move through the Examination process.	Ms Brodrick explained that the Applicant is monitoring the progress of other applications including any updates to their dDCOs. Where agreed changes are made, for example, with host authorities and statutory undertakers, relevant drafting will be carried across to the dDCO for the Scheme. This has already occurred in places, for example, some changes agreed to Schedule 17 in the Gate Burton Energy Park draft DCO have been carried across into the next version of the dDCO for the Scheme (submitted at Deadline 1).

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		<p><b>Post hearing note:</b> Schedule 17 to the dDCO submitted at Deadline 1 has been updated so that the drafting of the Schedule aligns with the latest drafting of the Gate Burton draft DCO. It is the Applicant's intention to keep the draft of the Schedule under review to take account of any further amendments that are made to the Gate Burton DCO.</p> <p>Ms Brodrick explained that the Applicant is attempting to ensure there is consistency across the schemes for the benefit of the other parties involved. She added that there would be further discussions about protective provisions later in the hearing, but that this is another area where the applicants are working together to ensure a consistent approach is taken.</p>
<p><b>Agenda Item 4 – The interrelationship with other National Infrastructure projects</b></p>		
4a	<p>The ExA invited the Applicant to provide an update on matters to be included in the 'Report on the interrelationship with other National Infrastructure projects' (refer to Annex G of the Rule 6 letter). The ExA invited any representatives of other Nationally Significant Infrastructure Projects present (refer to Annex C of the Rule 6 letter) to provide an update.</p>	<p>Ms Brodrick explained that discussions were ongoing with the developers for Gate Burton Energy Park, West Burton Solar Project and Tillbridge Solar Project relating to cumulative effects as well as the approach to mitigation to ensure collaboration and consistency of approach. The Applicant intends to submit the Interrelationship Report at Deadline 1. This report will address the matters mentioned in the Rule 6 letter, including the approach to mitigation and also to cumulative effects assessment, setting out where there are differences and explaining the reasoning for this.</p> <p>In response to the ExA's query regarding updates to the Interrelationship Report, Ms Brodrick stated that the Applicant's intention was to provide an update at each of the Examination deadlines, with further updates at the issue specific hearings in December. There will be a natural update point when the Examination for Gate Burton Energy Park closes in addition to ongoing updates relating to the other projects as and when information becomes available, for example when the Tillbridge Solar Project DCO application is submitted.</p> <p><b>Post hearing note:</b> The Applicant has submitted the current draft of the Report on the Interrelationship with other Nationally Significant Infrastructure Projects [EX1/C8.1.8] at Deadline 1.</p>
4b	<p>The ExA asked whether any other parties wished to comment on this Agenda Item.</p> <p>Mr Skelton, local resident, queried the number of other local projects for which the interrelationship is being considered and stated that the Beacon Fenn, Springwell, Fosse Green and Temple Oaks projects had not been listed in Annex C.</p>	<p>In response, Ms Brodrick explained that a number of projects have come forward for scoping since the DCO application for the Scheme was submitted to PINS, with Scoping Opinions for the Beacon Fen and Springwell Solar Projects being published in May 2023 and the Scoping Opinion for Fosse Green Solar Project published in July 2023. The information contained in the Scoping Reports for these projects is now available online and can be considered. Ms Brodrick stated that the Applicant's team is reviewing this information to ascertain whether any updates are required to the cumulative effects assessment. Ms Brodrick noted that the information currently available is very high level compared to the information available for projects currently in Examination or due to be submitted. She confirmed that as and when more information became available this would be considered by the Applicant and the Interrelationship Report would therefore be a live document that will be updated during the course of the Examination.</p>
<p><b>Agenda Item 5 - Parts 1 to 6</b></p>		
<p>For each of the parts below the Applicant was asked to respond to the questions posed and other IPs were invited to provide any comments or observations on the matters listed.</p>		
	<p><b>Part 1 – Preliminary</b> <u>Article 2 - Interpretation</u></p>	

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5a	<p>'Apparatus' is either as defined in the 1991 Act or it is not. The Applicant's definition includes a long list of additional items. The ExA asked why this was defined in this way and asked the Applicant to consider redrafting this definition.</p>	<p>Ms Brodrick explained that the definition of "apparatus" in Article 2 had been expanded to include all types of apparatus that may be used by the Applicant to construct, operate, maintain and decommission the Scheme and all types of apparatus affected by the Scheme. The Applicant's position is that the definition in the 1991 Act is not wide enough to include all types of apparatus belonging to statutory undertakers that may be affected by the Scheme. A wider definition therefore provides greater protection for statutory undertakers, for example, for the purposes of Article 32.</p> <p>Ms Brodrick added that this definition has precedent in numerous energy DCOs including the Longfield Solar Farm Order 2023, the South Humber Bank Energy Centre Order 2021, the Riverside Energy Park Order 2020, the Immingham Open Cycle Gas Turbine Order 2020 and the Drax Power (Generating Stations) Order 2019, and as such is considered acceptable to include in the dDCO.</p> <p>Ms Brodrick noted the ExA's concerns relating to the potential complexity of the mechanism of this definition and agreed that the Applicant would give some thought as to whether this could be listed out and respond at Deadline 1. However, she stated that the Applicant did not wish to elongate the definitions in the dDCO where the statutory drafting preference is to use existing definitions in other primary legislation if appropriate to do so.</p> <p><b>Post hearing note:</b> <i>The Applicant has considered the drafting of "apparatus" in the dDCO and does not consider that any amendments to the drafting are required, given that this drafting has precedent in a number of recent energy DCOs (as stated above).</i></p>
5b	<p>'Authorised development' – The ExA asked the Applicant to explain why this definition includes development beyond that described in Schedule 1.</p>	<p>Ms Brodrick explained that the Applicant had sought to list all of the works required for the Scheme in Schedule 1. However, as it groups the works and does not list every individual building or engineering operation required for the Scheme separately, the reference to any "other development" has been included to ensure that consent for and the associated controls in the dDCO (such as the requirements) apply to all works required for the construction, operation, maintenance and decommissioning of the Scheme.</p> <p>Ms Brodrick stated that this drafting has precedent in numerous energy DCOs and as such is considered acceptable to include in the dDCO.</p> <p>In response to ExA questioning about the drafting not being present in other solar schemes, Ms Brodrick stated that she believed it was present in the Longfield DCO, but that the Applicant would confirm this point and respond in writing.</p> <p><b>Post hearing note:</b> <i>The Applicant has considered the drafting of "authorised development". Please see the Applicant's response to Action 1 in the table below.</i></p>
5c	<p>'Date of decommissioning' – The ExA asked the Applicant to explain the reference to Requirement 21 which appeared to cover a different point (i.e., submission and agreement of a decommissioning plan).</p>	<p>Ms Brodrick explained that the purpose of this definition is to provide certainty for the relevant planning authorities as to when the timeframe for submitting the decommissioning plan for approval commences. The current version of the dDCO does not use this definition. This is an error and the next version of the dDCO (submitted at Deadline 1) will be amended to refer to the date of decommissioning and notification procedure in Requirement 21.</p> <p>Ms Brodrick confirmed that notification provisions will be included in the updated Requirement 21.</p> <p>Following further ExA queries relating to whether the definition of "maintain" would allow for the replacement of all of the panels within the lifetime of the project, Ms Brodrick explained that individual panels could be replaced if faulty or broken as part of the operational maintenance activities assessed in the Environmental Statement (see paragraph 4.7.1 of Chapter 4 Scheme Description of the Environmental Statement [APP-039]), so long as they complied with the Concept Design Parameters and Principles [APP-352]. Certain parameters have been assessed in the Environmental Statement and secured via Requirement 5 of the dDCO, and so</p>



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		<p>replacement solar panels or components in the battery energy storage system (BESS) could use an evolved technology or higher specification, but would still need to comply with height restrictions, for example.</p> <p>Ms Brodrick added that this could allow for more energy production or a longer lifespan, as it is appropriate for nationally significant infrastructure projects (NSIPs) to take account of the best technology available at the given time. However, the parameters assessed in the Environmental Statement and secured by the Requirements would still need to be met.</p> <p><b>Post hearing note:</b> <i>In response to the comments made at ISH1, the Applicant has updated the drafting of Requirement 21 in the dDCO submitted at Deadline 1. Please see the Applicant's response to Action 2 in the table below.</i></p>
	<p><b>Part 3 - Streets</b></p> <p>Article 11 – Temporary stopping up of streets and public rights of way</p>	
5d	<p>The ExA noted that the drafting of this Article appears novel. The Applicant was asked whether streets and public rights of way are better dealt with separately.</p>	<p>Ms Brodrick explained that as noted in paragraph 4.3.6 of the EM [APP-017], Article 11 broadly follows the approach in the model provisions (save that it also applies to public rights of way (PRoW) in addition to streets) and was therefore considered appropriate.</p> <p>The Applicant did not consider it necessary to deal with streets and PRoW in separate articles. Firstly, because this would lead to unnecessary duplication of provisions in the dDCO where it is neater and briefer to deal with both streets and PRoW together, and secondly, because the Applicant considers that the current drafting of Article 11 makes it clear which provisions apply to streets, PRoW, or both. There is precedent for this approach in the South Humber Bank Energy Centre Order 2021 (Article 13) and the Drax Power (Generating Stations) Order 2019 (Article 12).</p> <p>Ms Brodrick noted the ExA concerns and stated that the Applicant could give further consideration to the drafting of this Article.</p> <p><b>Post hearing note:</b> <i>The Applicant has considered the drafting of Article 11 of the dDCO. Please see the Applicant's response to Action 4 in the table below.</i></p>
5e	<p>The ExA noted that Article 11(1)(b) enables the undertaker to authorise the use of motor vehicles on classes of public rights of way where there is otherwise no public right to do so (albeit for the purposes of constructing and maintaining the Proposed Development). The Applicant was asked to provide further justification for this power.</p>	<p>Ms Brodrick explained that this power is required to enable the construction and maintenance of the authorised development as it will ensure that construction and maintenance vehicles are able to reach the solar PV and BESS sites in the most appropriate and least impactful way. It is considered to be a proportionate approach to obtaining the powers necessary to carry out the authorised development, as it is a "lesser" power compared to taking temporary possession of a right of way or extinguishing, suspending or permanently interfering with the private rights of a landowner.</p> <p>Ms Brodrick added that Article 11(4) places restrictions on the use of the power in Article 11(1)(b) requiring consultation with the street authority for those PRoW listed in Schedule 6 and consent for any other PRoW. There are also controls in the Requirements in Schedule 2 that need to be read in conjunction with the power in Article 11. For example, the Construction Traffic Management Plan [APP-135] and Operational Environmental Management Plan [APP-353] will manage / limit vehicle movements during the construction and operational phases of the Scheme, which are both subject to approval by the relevant planning authorities (see Requirement 14 and Requirement 15). Requirement 18 requires a PRoW management plan to be approved prior to commencement. Ms Brodrick stated that this must be substantially in accordance with the outline PRoW Management Plan [APP-136].</p>

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5f	<p>Furthermore, the power in Article 11(1)(b) is exercisable for 'any reasonable time'. The Applicant was asked to explain the need for this and identify the public rights of way over which it considers this power would be exercised.</p>	<p>Ms Brodrick reiterated that the Construction Traffic Management Plan [APP-135] and Operational Environmental Management Plan [APP-353] will manage / limit vehicle movements during the construction and operational phases of the Scheme, which are both subject to approval by the relevant planning authorities (see Requirement 14 and Requirement 15). Requirement 18 requires a PRow management plan to be approved prior to commencement. This must be substantially in accordance with the outline PRow Management Plan [APP-136]. She added that paragraph 3.5 of the outline plan sets out a number of management measures that will be put in place to ensure the safety of PRow users where construction vehicles are present. The outline plan also sets out the affected PRow and the likely number of construction vehicles in those areas.</p> <p>Following ExA queries relating to reinstatement provisions, for instance, if damage is caused to a PRow by construction vehicles, Ms Brodrick explained that Article 11(5) addresses compensation but that the obligations to ensure the maintenance of PRow during construction will be secured through the PRow Management Plan. Ms Brodrick confirmed that the Applicant would check whether maintenance of the surface of PRows during construction included reinstatement. She explained that it is certainly the Applicant's intention that any damage caused to PRow will be reinstated, but that the Applicant would find the reference in the PRow management plan and provide it in the summary at Deadline 1. If there was no reference in the plan, Ms Brodrick confirmed that the Outline PRow Management Plan would be updated to clarify the position.</p> <p><b>Post hearing note:</b> the final bullet point in paragraphs 3.5, 3.7 and 3.12 of the Outline PRow Management Plan [APP-136] states that "Any damage to the surface of the footpath will be repaired as soon as practicable. The surface will be returned to its original condition following completion of construction". A new version of the Outline PRow Management Plan has been submitted at Deadline 1 [EX1/C6.3.14.3_A] which includes further detail regarding the reinstatement of PRow.</p>
	<p><u>Articles 8, 9 and 10</u></p>	
5g	<p>Lincolnshire County Council queried the mechanism in place to ensure that usual permitting procedures for street works remain in place, allowing the Council as highways authority to check and control the matters under Articles 9 and 10. It sought an assurance for the highways authority that their usual ability to approve design through a s278 agreement would remain.</p> <p>The ExA stated that this linked to written questions relating to the broad description of alteration in Schedule 5 and asked the Applicant if this would be clarified to include extent.</p>	<p>Ms Brodrick explained that the Applicant's intention is that the detail of the access works permitted via these Articles and referred to locationally in the plans in Schedule 5 would be secured through the discharge of the Construction Traffic Management Plan [APP-135] via Requirement 15, which would set out the detail of each access work. Requirement 15 is a pre-commencement requirement and therefore the details must be approved before commencement of the authorised development and the use of the powers in Articles 9 and 10.</p> <p>Ms Brodrick added that a separate point has arisen under the Examination of the Gate Burton DCO, regarding who the appropriate discharging relevant planning authority would be. The Applicant would therefore be making amendments to the dDCO on the basis that Lincolnshire County Council and West Lindsey District Council had indicated that they would like the same approach to be applied for the Scheme.</p> <p><b>Post hearing note:</b> The Applicant has amended the drafting of Schedule 2 to the dDCO submitted at Deadline 1 so that the drafting is aligned with the drafting of the equivalent schedule in the Gate Burton draft DCO regarding who the appropriate discharging relevant planning authority would be for each requirement. See the Applicant's response to Action 15 in the table below.</p> <p>In response to further ExA questioning relating to the detail included in other DCOs, Ms Brodrick explained that a degree of flexibility is required at this stage in the design process but that the Applicant would take this point away and consider if and how any further detail could be included. She stated that whilst the structure and drafting of similar provisions in other DCOs have been incorporated in the dDCO for the Scheme, the detail and specifics for each project will vary. For instance, for the Scheme, there is a significantly longer grid connection cable and four separate solar PV sites, and so flexibility will be needed, for instance, regarding access locations. Ms Brodrick added that this would be considered at the detailed design stage and approved through the</p>

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		<p>discharge of the Construction Traffic Management Plan [APP-135]. She also stated that further details could be provided by the Applicant's transport consultant at an issue specific hearing on the topic.</p> <p><b>Post hearing note:</b> <i>The Applicant has considered the level of detail provided in Schedule 5 to the dDCO and whether further details should be included here, or in an associated management plan. Please see the Applicant's response to Action 14 in the table below.</i></p> <p>Ms Brodrick explained that there are no separate limits of deviation in the dDCO but that each Work Number can only be carried out within the respective areas shown on the Works Plan [AS-007]. In relation to queries about protections for the highways authority from Lincolnshire County Council, Ms Brodrick stated that presently, the discharge of requirements would enable Lincolnshire County Council to have this control. Article 14 allows agreements to be entered into covering topics typically contained in a s278 agreement, for instance, the payment of works and timings. She additionally confirmed that the definition of "street authority" in the dDCO included the highways authority.</p> <p>In response to further queries from the ExA and Lincolnshire County Council relating to the mechanisms for approving highways works included in the dDCOs for the Mallard Pass Solar Farm and the Gate Burton Energy Park, Ms Brodrick explained that she did not believe a similar approach had been requested by Lincolnshire County Council in relation to the Scheme, but that the Applicant would discuss the point with Lincolnshire County Council outside of the hearing to determine if this approach is appropriate for the Scheme.</p> <p>Mr Phillips, on behalf of the Applicant, added that there is broad agreement between Lincolnshire County Council and applicants for the Scheme, West Burton Solar Project, Gate Burton Energy Park and Mallard Pass Solar Farm to align approaches across the dDCOs in the area. As such, he stated that the principle is agreed but that these projects are just at different stages. This should therefore not be an issue here and the Applicant will be able to provide an update in due course.</p> <p>Ms Brodrick confirmed that Article 14 does not compel the undertaker into seeking an agreement, but enables them to do so, as an agreement may not be necessary for all of the highways works required for the Scheme.</p> <p>In relation to Article 11, Lincolnshire County Council raised concerns around timeframes for providing notice of temporary closures and diversions, as well as that the term "reasonable" appearing to be undefined. The Applicant notes the ExA's comments that the meaning of the term "reasonable" will depend on the circumstances but that it is a well-established term in DCOs. Mr McBride stated that there appeared to be no requirement to reinstate PRowS, and that it was not clear whether PRowS are suitable for the uses identified. Lincolnshire County Council stated that similar wording to that used for streets should apply to PRowS.</p> <p>Ms Brodrick confirmed that the Applicant would consider the drafting of this Article to ensure Lincolnshire County Council's concerns have been addressed, as well as considering the best location for such commitments (for example, it may be more appropriate to include further detail in the Outline PRow Management Plan).</p> <p><b>Post hearing note:</b> <i>The Applicant has considered the drafting of Article 11 of the dDCO. Please see the Applicant's response to Action 4 in the table below.</i></p> <p>In response to a further query about the term "reasonable person" from Sturton by Stow Parish Council in respect of Article 10(6)(c), Ms Brodrick explained that the term has a specific legal meaning and in this context, this term will mean what is reasonable in the context of the Scheme. A "reasonable person" would be determined by the courts in this particular case, rather than the Applicant.</p>
	Article 12 – Private roads	

#	ExA Question / Item for discussion	Applicant's response
5h	<p>Article 12 enables the undertaker to use any private road within the Order limits for the purposes of, or in connection with, the construction or maintenance of the Proposed Development. The Applicant was asked to provide further justification for the inclusion of this article and to identify a prior precedent (whether Model Provisions or DCO).</p>	<p>Ms Brodrick explained that precedent provisions are included in the Boston Alternative Energy Facility Order 2023 (Article 16) and the Southampton to London Pipeline Development Consent Order 2020 (Article 14). She added that the provision is limited in the nature of its use to the construction phase and for maintenance.</p> <p><b>Post-hearing note:</b> <i>It is confirmed in this written summary that the two precedent powers referred to are also expressed to apply during both construction and for maintenance of their respective schemes. Please see the Applicant's response to Action 5 in the table below.</i></p> <p>Similarly to other provisions discussed, this is considered appropriate to deal with highways powers that exist but is also subject to the controls mentioned in the Construction Traffic Management Plan [APP-135] and Construction Environmental Management Plan [APP-337]. Article 12(2) requires the undertaker to compensate a person liable for the repair of the road in the event of any damage and therefore provides suitable protection. Ms Brodrick added that this power should not be considered in isolation but in conjunction with the commitments set out in the management plans secured by the Requirements.</p>
5i	<p>The Applicant was also asked to identify which roads it considers will be affected by this provision and to provide details of any discussions that have taken place with the owners of those roads.</p>	<p>Ms Brodrick confirmed that the <b>Streets Plan [AS-010]</b> would be updated for Deadline 1 to show which private roads will be subject to this power. Where the landowner is known, the Applicant has discussed the use of private roads as part of the discussions for voluntary property agreements. However, there are a number of private tracks where the landowner is unknown as identified in the Book of Reference.</p> <p><b>Post hearing note:</b> <i>The Applicant has updated the Streets Plan at Deadline 1 [EX1/C2.12_B] to show the private roads that will be subject to this power.</i></p> <p>Following further questioning from the ExA relating to Article 12 and whether the dDCO limits the roads that this power can apply to, Ms Brodrick explained that whilst she was not sure whether the specific article had been raised with the landowners, the use of any private roads will have been discussed. She stated that the intention is for this power to apply to all private roads within the Order limits, which will be identified on the updated Access Plan. This is because it is typically preferable to use an existing track rather than to construct a new one over fields where access is required. She added that it may also be preferable from a highways perspective to use an existing access point off a public highway.</p> <p>In response to ExA queries about reinstatement and compensation, the Applicant agreed to review the Outline Construction Traffic Management Plan [APP-135] and the Outline Construction Environmental Management Plan [APP-337] to confirm whether general provisions relating to reinstatement relate to private roads were included. Ms Brodrick explained that as is typical for compulsory acquisition powers, individual landowners would be entitled to compensation for any loss or damage and it would be for the relevant planning authority to enforce compliance with the requirements in the DCO. Whilst individual landowners may be liable for the physical reinstatement, the Applicant would carry out the works pursuant to the Requirements. The Applicant agreed to obtain further information with its land agents and respond more fully in writing to the question of whether reinstatement could be required and whether landowners are aware of their position.</p> <p><b>Post hearing note:</b> <i>The Applicant has updated the Outline Construction Traffic Management Plan at Deadline 1 (see paragraph 7.2(xxii) of [EX1/C6.3.14.2_A]) and the Outline Construction Environmental Management Plan at Deadline 1 [EX1/C7.3_A] to make clear that provisions relating to reinstatement will apply to private roads as well as highways.</i></p>

#	ExA Question / Item for discussion	Applicant's response
5j	The Applicant was also asked to explain why it considers the power to take temporary passage over private roads both during construction and maintenance is reasonable and proportionate in the context of this project.	Ms Brodrick explained that access via private roads will be required for maintenance purposes during the operational life of the authorised development. Article 12 creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than taking temporary possession extinguishing, suspending or permanently interfering with the private rights of a landowner. It is typically preferable to use an existing access road rather than to create a new access road for maintenance purposes given the limited maintenance activities required for this type of project.
	<p><b>Part 5 - Powers of Acquisition</b></p> <p>Article 22(1) – Compulsory acquisition of rights</p>	
5k	The ExA noted that Article 22(1) is broadly drafted to enable the Compulsory Acquisition (CA) of new rights over all of the Order land. While Schedule 10 limits the CA power in defined plots to the rights listed in that schedule, CA of rights is not limited to the plots listed in Schedule 10. The Applicant was asked to confirm whether this was its intention and if so, explain why it considered the approach of allowing the CA of undefined rights not listed in Schedule 10 was justified.	<p>Ms Brodrick explained that whilst it is correct that new rights could be sought over all of the Order limits, the articles need to be read together. Article 20 provides a general power to compulsorily acquire land, but this is subject to Articles 22 and 29 which limit that general power. Article 22 provides that only new rights and restrictions can be taken over land shown coloured blue on the Land Plans [AS-006], and only temporary possession can be taken over plots shown coloured yellow Land Plans [AS-006]. Ms Brodrick added that Article 22(1) allows a right to be taken instead of acquiring the freehold in its entirety where this is more appropriate and proportionate, for example, where the whole of the pink land is not required, the rights for cabling could be taken up to the boundary of the freehold, rather than needing to acquire the freehold when only rights are required. This right is not undefined as it must still meet the tests set out in Article 20 (i.e. it must be required for the authorised development or required to facilitate or is incidental to the authorised development). However, as the ability to acquire a right is a less onerous power than acquiring the freehold it is considered to be proportionate.</p> <p>In response to ExA queries relating to landowners' awareness of the Applicant's ability to acquire rights not defined in Schedule 10, Ms Brodrick explained that the Applicant had entered into voluntary agreements with landowners covering all of the land identified in pink on the Land Plans [AS-006]. The compulsory acquisition powers over this land are being sought to deal with unknown third-party interests and to ensure the deliverability of a NSIP should the voluntary agreements fall away. However, any rights that may be required over this land are set out in the voluntary agreements.</p> <p>In answer to further questioning about the wording of Article 20(1)(a) and the difference between this sub-section and Article 20(1)(b), Ms Brodrick stated that the Applicant believed there was precedent for this, but would confirm this and provide an example of where this is relevant to the particular scheme in the written summary.</p> <p><b>Post hearing note:</b> Article 20(1)(a) and (b) has precedence in Article 19(1) of the Drax Power (Generating Stations) Order 2019. However, the Applicant as amended Article 20(1)(b) in the dDCO submitted at Deadline 1 to make it clear that the use of the land must be in connection with the authorised development which is consistent with the approach being taken in the draft DCO for the Mallard Pass Solar Farm.</p>
5l	The Applicant was asked to provide evidence that persons with an interest in the Order land (and not just those plots listed in Schedule 10) have been made aware that new, undefined rights were being sought over all of the Order land and that they were consulted on that basis.	<p>Ms Brodrick stated that, as explained in answer to the previous question, Schedule 10 serves to "limit" the practical exercise of Article 22 to those plots and for the purposes specified in that article (i.e. the plots shown coloured blue of the Land Plans [AS-006]). The power is not "undefined" as it must comply with Article 20 and be required for, or to facilitate, or is incidental to the authorised development.</p> <p>Ms Brodrick reiterated that the Applicant has option agreements in place with each of the owners of the "pink" land.</p>

#	ExA Question / Item for discussion	Applicant's response
5m	The Applicant was asked to explain why Article 22 was stated to be subject to Article 23.	Ms Brodrick explained that the additional measures allowing an undertaker to notify the holder of a particular right that the powers do not apply to that right in Article 23(6) will apply to Article 22(2) if those circumstances arise. New private rights and restrictions would cease to have effect if their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 22 (Compulsory acquisition of rights). She added that this also provides for compensation.  Ms Brodrick explained that there is a difference between acquiring a new right under Article 22, and acquiring an existing right under Article 22, but that both are permitted.
	<u>Article 23(2)(c) – Private Rights</u>	
5n	The Applicant was asked to explain what enquiries have been made to establish what private rights exist over the Order land and what affected parties have been consulted.  It was agreed that this had already been discussed.	n/a
5o	The ExA noted that there was some overlap with Article 22 which also gave the Applicant the ability to CA existing rights. The Applicant was asked to explain why both articles were required.	Ms Brodrick explained that this was to ensure there is a difference between a private right ceasing to have effect in relation to the project, but not ceasing to exist altogether. Article 23 essentially limits the scope of the power in Article 22. For example, if there is a private drainage right, the project would be able to interfere with the right, but this would not extinguish the right in respect of third parties.
5p	The Applicant was asked to explain the inclusion of Article 23(2)(c). The Applicant's attention was drawn to paragraph 9.3 of the Secretary of State's decision letter in the Longfield Solar Farm DCO where the SoS removed a similarly drafted provision on the basis that it was uncertain and because he did not agree that rights should be affected before triggering one of the formal processes set out in (a) or (b).	The Applicant agreed that this would be removed to ensure a consistent approach.  <b>Post hearing note:</b> <i>The Applicant has now removed Article 23(2)(c) from the dDCO submitted at Deadline 1. Please see the Applicant's response to Action 6 in the table below.</i>
5q	The ExA invited those present to comment on this Agenda Item.  Mr Skelton explained that the farm track is the sole access to his property and asked why he had not been consulted.	Ms Brodrick explained that all potentially affected private rights that were known to the Applicant were set out in the Book of Reference [AS-015]. The steps taken to identify persons with rights, such as rights of access, could be found in sections 8.1 and 8.2 of the Statement of Reasons Revision A [AS-014] and where consent was required, these individuals would have been approached to discuss voluntary agreements. Consultation with other parties with property interests that might be affected by the Scheme took place during the pre-application process, as set out in the Consultation Report [APP-021].  Ms Brodrick added that voluntary negotiations for the necessary land and rights to construct, operate and maintain the Scheme had taken place with the owners of the land (as they are the persons who would be able to grant such rights to the Applicant) rather than any third parties who might have a right (in common with others) to use an access. Consultation more generally with Interested Parties had taken place throughout the pre-application process including at various meetings with certain Interested Parties.

#	ExA Question / Item for discussion	Applicant's response
		<p>In response to comments from Mr Skelton that he had not been informed that he was an Affected Person, Ms Brodrick confirmed that Mr Skelton was listed in the Book of Reference [AS-015] (see plots 07-155, 07-156, 07-157, 09-188, 09-189, 09-190) as an Affected Person and agreed that the Applicant provide a summary of communications had to date with Mr Skelton at Deadline 1.</p> <p><b>Post hearing note:</b> The Applicant has met with Mr Skelton on three occasions. One of these meetings was held prior to the opening of Consultation (on 14/10/21), so was included in the Consultation Report in <b>Table 4.1 of C5.1 Consultation Report: Early engagement meetings held by the Applicant [APP-021]</b>. A record of the other two meetings can be found in <b>Table 4.2 of C5.1 Consultation Report: Meetings held between the Applicant and near neighbours [APP-021]</b>.</p> <p>Mr Skelton has provided phase two consultation feedback.</p> <p>A feedback code of "Party ID 185454" was assigned to Mr Skelton's feedback submitted as a Section 44 party, which can be found within <b>C5.11 Section 42 Applicant Response [APP-034]</b>.</p> <p>A feedback code of "FFCAWB0206022" was assigned to Mr Skelton's feedback as a Section 47 party. This can be found within <b>C5.10 - Section 47 Applicant Response [APP-033]</b>.</p> <p>The Applicant also confirms that Mr Skelton was served with a section 56 notice on 15 February 2023, following acceptance of the DCO application for Examination.</p>
	<p><b>Part 6 - Miscellaneous and General</b> <u>Article 49 - Crown Rights</u></p>	
5r	<p>The Applicant was asked to confirm whether consent under sections 135(1) and (2) PA 2008 had been obtained (or when it anticipated such consent would be obtained).</p>	<p>Ms Brodrick explained that compulsory acquisition powers cannot be sought in respect of Crown interests and therefore a voluntary agreement is being sought with the Crown Estate Commissioners. Section 135 consent is required to enable the acquisition of third party interests in land where the Crown has an interest. Ms Brodrick stated that the Applicant had been in contact with the Crown Estate's solicitors and would endeavour to obtain consent prior to the close of the Examination. However, as the Crown Estate is involved in a number of DCOs, consent can often be delayed. For the purposes of the Planning Act 2008, this consent needs to be in place at the point at which the SoS makes their decision.</p>
5s	<p>The ExA invited those present to comment on this Agenda Item relating to Article 38.</p> <p>Lincolnshire County Council queried the number of trees and hedgerows to be removed and the impact of this on the LVIA.</p> <p>Further questions were raised by Sturton by Stow Parish Council, 7000 Acres and Mr Skelton in relation to the removal of hedgerows.</p>	<p>Ms Brodrick stated that, as briefly touched on in Open Floor Hearing 1, the powers set out in Articles 38 and 39 are deliberately broad as the detailed design is not known at this stage. For instance, the grid connection cables will be micro-sited within the grid connection corridor. Whilst the Applicant has applied for the power to remove any part of the hedgerows within the Order Limits and listed in Schedule 13, this is power is controlled and limited by the management plans secured by the Requirements. Ms Brodrick emphasised that the Important Hedgerow Plan [APP-013] needs to be read in the context of the Requirements and the assumptions set out in the Environmental Statement, which will be taken into account when the relevant planning authority approves the final Landscape and Ecological Management Plan pursuant to Requirement 7.</p> <p>Ms Brodrick further explained that further detail regarding the removal of hedgerows is set out in the outline Landscape and Ecological Management Plan [APP-339]. Ms Brodrick also referred to Chapter 9 - Ecology and Biodiversity of the Environmental Statement [APP-044] which sets out the anticipated extent of hedgerow removal for the solar PV sites and grid connection. Whilst the Applicant has sought a wide ranging power to enable flexibility for the detailed design, the actual amount of hedgerows removed for the Scheme will be significantly less than the lengths shown in Schedule 13.</p>

#	ExA Question / Item for discussion	Applicant's response
		<p>The Applicant agreed to consider whether the drafting could be amended to provide more clarity as to the extent of hedgerow removal. The Applicant also agreed to look at specific hedgerows mentioned by Interested Parties in more detail to provide additional information as to why such hedgerows had been included (for example, removal of hedgerows for enable access for abnormal loads during construction). In particular, the Applicant agreed to provide details of the works required to hedge numbered 275 in response to comments made by Sturton by Stow Parish Council.</p> <p>In response to comments made on behalf of 7000 Acres, Ms Brodrick confirmed that the word, "substantially" is used in Requirement 7(2) when referring to the final plans being in substantially in accordance with the outline plans to ensure that the most appropriate and up to date approaches and technology available at the time of preparation of the final plan can be used. The final plan will be more detailed and restrictive on the undertaker (as the detailed design will be known) and this approach is typical for DCOs and of benefit to stakeholders. She reiterated that the requirements in the dDCO limit the amount of hedgerow the undertaker can remove, and this has to be approved and be in accordance with the impacts assessed in the Environmental Statement.</p> <p>Ms Brodrick stated that the worst case assessed in the Environmental Statement did not include the removal of all hedgerows, as this was not the intention of the Scheme. Ms Brodrick reiterated that the powers had to be read in conjunction with the Requirements.</p> <p><b>Post hearing note:</b> The Applicant has considered the provisions relating to hedgerow removal in the dDCO and outline management plans. Please see the Applicant's response to Action 7 in the table below. The Applicant has responded to Sturton by Stow Parish Council's concerns regarding the intentions for hedgerow 275 and other hedgerows at Deadline 1 within <b>C8.11.10 The Applicant's Response to Procedural Deadline A and Other Submissions</b>. Specifically, the response to SSPC2-08 confirms that: "It is not anticipated that the removal of any section of hedgerows H275, H278, H279 and H280 will be required".</p>
<p><b>Agenda Item 6 – Schedules 1, 2, 9 and 17</b></p>		
<p>For each of the Schedules below the Applicant was asked to respond to the questions posed and other Ips were invited to provide any comments or observations on the matters listed.</p>		
<p><b>Schedule 1 – Authorised Development</b></p>		
6a	<p>In view of its stated purpose as associated development, the Applicant was asked to explain why there was no upper limit on the storage capacity of the BESS.</p>	<p>Ms Brodrick explained that the Applicant had not included an upper limit on the storage capacity for the BESS for the same reasons that an upper limit was not provided for the generating capacity of the solar panels. Ms Brodrick referred to paragraph 1.4.4 of the EM [APP-017] which set out the justification for this approach (albeit in respect of the generating station in Work No 1). An upper limit is not deemed necessary for planning purposes and the Applicant would want to be able to take advantage of any technological improvements that may arrive prior to construction, so long as the built development was in accordance with the fixed parameters (e.g. relating to size and external appearance).</p> <p>In response to ExA queries relating to its categorisation as "associated development", Ms Brodrick referred to the Applicant's Statement of Need [APP-350]. She confirmed that the Applicant is satisfied that the BESS meets the test for "associated development" from a legal perspective. Whilst Ms Brodrick explained that she could not comment on why certain DCOs had agreed a cap, she stated that there are a number of DCOs that included energy storage as associated development without a cap, such as the Hornsea Four Offshore Wind Farm Order 2023.</p> <p>Responding to safety queries raised on behalf of 7000 Acres, Ms Brodrick stated that the Applicant would respond in detail in writing at Deadline 1, but that Requirement 6 of Schedule 2 to the dDCO requires a battery storage safety management plan to be</p>



#	ExA Question / Item for discussion	Applicant's response
		<p>submitted and approved prior to commencement of construction, and any changes in technology would need to be in compliance with this or the Applicant would need obtain approval to amend the plans secured in the DCO.</p> <p>The Applicant also agreed to review the consistency of terms used to describe the Battery Storage Safety Management Plan [APP-348] and update the dDCO accordingly Deadline 1.</p> <p><b>Post hearing note:</b> The Applicant has responded to the safety concerns raised by 7000 Acres regarding the BESS in their Relevant Representation [RR-041]. Please see response 7A-46 in the Applicant's Responses to Relevant Representations submitted at Deadline 1 [EN010133/EX1/C8.1.2]. Please also see the Applicant's response to Action 13 in table below regarding updates made to ensure consistent use of terminology in the dDCO.</p>
6b	<p>The Applicant was asked to explain the reasons for the final paragraph of Schedule 1, particularly in light of the extensive list of 'further associated development' listed immediately before it.</p>	<p>Ms Brodrick explained that as briefly touched on earlier in the ISH, the Applicant had attempted to list in Schedule 1 all of the types of "associated development" that might be needed for the construction, operation and maintenance of the Scheme, but this is not intended to be an exhaustive list. She highlighted that as the detailed design for the Scheme is not finalised, there may need to be more types of works included. The scope of any additional works permitted would, however, be limited to those assessed in the environmental impact assessment.</p> <p>Ms Brodrick referred, as precedent, to the South Humber Bank Energy Centre Order 2021, the Riverside Energy Park Order 2020, the Immingham Open Cycle Gas Turbine Order 2020 and the Drax Power (Generating Stations) Order 2019. Ms Brodrick explained that it should also be noted that the scope of works is limited to the envelope of effects assessed in the Environmental Statement and any works must be located within the Order Limits, through the inclusion of the wording "...but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement."</p> <p>In response to ExA questioning relating to use of the word "including" in other made DCO, Ms Brodrick confirmed that whilst this is not intended to be an exhaustive list, the Applicant would review the other solar DCOs as well as the wording, "unlikely to give rise", in the context of authorised development and Schedule 1.</p> <p><b>Post hearing note:</b> The Applicant has considered the drafting of the final paragraph of Schedule 1 of the dDCO and does not consider that any amendments are required. Please see the Applicant's response to Action 9 in the table below.</p>
	<p><b>Schedule 2 - Requirements</b></p> <p><u>General</u></p>	
6c	<p>The ExA noted that ES Chapter 2 (EIA Process and Methodology) indicated the ES had assessed the environmental impacts of the scheme over a 40-year period. The Applicant was asked to signpost where in the dDCO the consent is limited to this timescale or otherwise justify its absence.</p>	<p>Ms Brodrick stated that the dDCO did not include a time limit. Ms Brodrick referred to Draft NPS EN3 (March 2023) at paragraphs 3.10.56 and 3.10.140 that applicants can seek a consent for solar NSIPs without a time limit. However, paragraph 3.10.137 states that the Secretary of State should ensure that outline plans for decommissioning the generating station and restoring the land have been put forward. An outline decommissioning statement forms part of the DCO application documents [APP-338] and decommissioning is secured by Requirement 21.</p> <p>Ms Brodrick confirmed that for the purposes of the environmental impact assessment, the assumed operational lifetime of the Scheme is 40 years. This time period has been used based on the current anticipated operational life of solar projects. The assessment of decommissioning effects in the Environmental Statement has been undertaken on this basis.</p>

#	ExA Question / Item for discussion	Applicant's response
		<p>She added that the Applicant is committed to decommissioning the Scheme once it is no longer in use. However, given the possibilities of technological advancement during the lifetime of the Scheme, a time limit has not been considered necessary based on environmental impacts identified in the Environmental Statement for this particular Scheme. It is noted that a time limit is not typically imposed on other types of energy generation. For example, the recently granted Boston Alternative Energy Facility DCO does not have a time limit and the environmental impact assessment was undertaken on the basis of an estimated 25-year operational life.</p> <p>Following further queries from the ExA relating to the temporary loss of land, return to agricultural use and the consideration of this in the Environmental Statement, Ms Brodrick informed the ExA that Chapter 19 [APP-054] is being updated to correct a couple of errors and will be submitted at Deadline 1. She explained that the Scheme will be decommissioned at the end of its operational life. In accordance with other energy projects, the Applicant has assessed the likely operational life of the project for the ES and therefore considers this to be compliant with the relevant EIA legislation. Whilst this may warrant further discussion in relation to the planning balance, including the impact on agricultural land, the Environmental Statement has been prepared in an appropriate and compliant manner.</p> <p><b>Post hearing note:</b> Chapter 19 [APP-054] has been updated to correct a couple of errors and has been submitted to the Examination at Deadline 1 [EX1/C6.2.19_A].</p> <p>Ms Brodrick further explained that the Applicant is committing to the Scheme being decommissioned but it is not proposing a prescribed time limit to the consent. The Applicant considers that the Scheme has been correctly assessed in the Environmental Statement. In answer to additional questions from the ExA, the Applicant agreed to provide further information at Deadline 1 on how the Environmental Statement has considered decommissioning and the extent to which the estimated 40 year operational life had been taken into account. Ms Brodrick added that the Applicant is aware of references to time limitations being taken into account in draft NPS EN3, but whether this is necessary or appropriate will depend on the impacts of a particular project.</p> <p>In response to West Lindsey District Council, Sturton by Stow Parish Council and Lincolnshire County Council's suggestions of imposing a time limitation of 40 or 60 years, Ms Brodrick reiterated that the Applicant would respond to this point in writing but that the Applicant did not agree that the Environmental Statement had been temporally limited. She noted the point that other schemes such as the Gate Burton Energy Park, have now been limited to 60 years but that the Applicant did not consider that a time limit was necessary for the Scheme. Ms Brodrick confirmed that the Applicant will set out the factors that differentiate the Scheme from other projects in its written response.</p> <p><b>Post hearing note:</b> Following further consideration of this issue, and to address concerns raised that the Scheme could be in situ in perpetuity, the Applicant has now inserted a provision into the draft DCO requiring the Scheme to be decommissioned within 60 years of the date of final commissioning. Requirement 21(1) in Schedule 2 to the draft DCO provides that "The date of decommissioning must be no later than 60 years following the date of final commissioning." Please see the Applicant's response to Action 2 in the table below.</p>
	<u>Requirement 5 – Detailed design approval</u>	
6d	The Applicant was asked to explain why this requirement is confined to Work Nos 1 to 4 and how the details of design will be approved in relation to the other numbered works.	Ms Brodrick explained that there is no planning reason for the other Work Nos to be covered by Requirement 5. The detailed design requirement in the dDCO is limited to the "above ground" elements of the authorised development (i.e. the Work Nos associated with the PV panels, the BESS and the onsite substations). Work No 5 is not included as this relates to works to the National Grid substation within their operational boundary. It is unusual for such works to be subject to a detailed design requirement. Work No 6 is not included as grid connection is below ground.

#	ExA Question / Item for discussion	Applicant's response
		<p>Ms Brodrick confirmed that the details of the relevant aspects of Work Nos 5 and 6 are secured via other management plans such as the Construction Traffic Management Plan [APP-135] and Construction Environmental Management Plan [APP-337], the fencing plans under Requirement 10, and the landscaping under Requirement 7.</p> <p>In response to queries from Lincolnshire County Council as to whether a provision could be inserted into Requirement 7 (as in the dDCO for Gate Burton Energy Park) to cover planting, layout specification and programme, Ms Brodrick stated that the Applicant was aware of the additional wording and was checking whether this point was already covered in the Outline Landscape and Ecological Management Plan [APP-339] to avoid duplication. The Applicant agreed to consider this request further and confirm how the point has been dealt with at Deadline 1.</p> <p><b>Post hearing note:</b> The Applicant notes that the creation and management of the planting for the Scheme is dealt with in the Outline Landscape and Ecological Management Plan submitted at Deadline 1 [EX1/C7.3_A] and as the final Landscape and Ecological Management Plan must be substantially in accordance with the Outline Landscape and Ecological Management Plan the Applicant does not consider that there is a need to add any additional wording to Requirement 7.</p> <p>Responding to points raised by the Canal and River Trust in relation to securing the depth of drilling of Work No 6b under the River Trent, Ms Brodrick explained that the Applicant is in discussions with the Trust and has agreed to this commitment; the Applicant is currently considering the most appropriate place for this commitment and will confirm its position at Deadline 1. Ms Brodrick stated that if the preference is for this commitment to be included in the Concept Design Parameters and Principles [APP-352], then changes will need to be made to Requirement 7 to ensure that it applies to Work No 6. However, it may be more appropriate to include the commitment in the Outline Construction Environmental Management Plan [APP-337] which covers crossing and construction methodology. In respect of the crossing of the River Trent, there will be an approval process which will be secured through the protective provisions for the benefit of the Canal and River Trust which will be added to the version of the dDCO submitted at Deadline 1.</p> <p><b>Post hearing note:</b> The Applicant has amended the Concept and Design Parameters and Principles submitted at Deadline 1 [EX1/C7.15_A] to include a requirement to construct the grid connection at least 5m below the River Trent. A consequential amendment has also been made to Requirement 5 in the draft DCO submitted at Deadline 1 to ensure that Work No. 6 is constructed in accordance with the Concept and Design Parameters and Principles.</p>
	<p><u>Requirement 9 – Biodiversity Net Gain</u></p>	
6e	<p>The ExA noted that the Biodiversity Net Gain Report [APP-089] indicated a Biodiversity Net Gain (BNG) of 96% in habitat units, 70% in hedgerow units and 10% in river units. The Applicant was asked to explain whether, and if so how, these levels of BNG are to be secured in the dDCO.</p> <p>The Applicant was asked to explain the drafting of this requirement.</p>	<p>Ms Brodrick explained that the anticipated BNG to be delivered as part of the Scheme is set out in the BNG report (APP-089). The BNG strategy submitted under Requirement 9 will secure the specific levels of habitat, hedgerow and river unit gains based on the final detailed design of the Scheme.</p> <p>She stated that the drafting requires the strategy to be submitted prior to commencement, which follows the approach in the Hornsea Four Offshore Wind Farm Order 2023. The Applicant is mindful that this is a rapidly evolving area, with a different approach being taken in the Longfield Solar Farm Order 2023 (in which a requirement states that the landscape and ecological management plan must include details of how the plan will secure a minimum of 87% biodiversity net gain during the operation of the authorised development, calculated using Defra's Biodiversity Metric 4.0). The Applicant is keeping the position under review as the BNG continues to evolve for NSIPs. Ms Brodrick noted that it is necessary to ensure that there is sufficient flexibility as detailed design is not currently known. The exact percentage of BNG secured will be calculated at the time the Applicant is discharging the requirement. For example, there is a need to ensure there isn't an issue with compliance if the metric were to change and result in</p>

#	ExA Question / Item for discussion	Applicant's response
		<p>a reduction of units. In response to queries from West Lindsey District Council relating to the need for “retention” provisions in requirements 6,7,8, 9, 16 19 and 20. Ms Brodrick explained that as a general point of principle, if a plan must be implemented as approved, then any maintenance included in that approve plan must also be implemented. Ms Brodrick added that the Applicant was aware that additional drafting was being considered on other projects and agreed to review this. She confirmed that if an approved plan states that any newly planted trees must be monitored and replaced, a further provision is not required in the drafting of the required to ensure such maintenance activities are undertaken.</p> <p>Ms Brodrick further stated that as part of the Applicant's review of this request, it would consider the outline management plans and to the extent that there is to be ongoing management and monitoring, the Applicant will ensure there is a paragraph on this topic in the relevant outline management plan. The Applicant agreed to keep the ExA informed of any updates arising from conversations with West Lindsey District Council on this point.</p> <p>Ms Brodrick asked West Lindsey District Council to confirm whether the dDCO should be amended in line with the draft DCO for the Gate Burton Energy Park to specify the relevant planning authority for discharging each requirement (i.e. whether it will be West Lindsey District Council or Lincolnshire Country Council). West Lindsey District Council agreed to provide a list to the Applicant of each requirement and which authority would be responsible for discharge, and stated that the authorities are in agreement on this.</p>
6f	The Applicant was asked to confirm whether or not the WSI [APP-131] is currently in outline form and whether it has been agreed with the Host Authorities.	<p>Ms Brodrick explained that the WSI [APP-131] had not been agreed with Lincolnshire Country Council as there was currently a difference in professional opinion on the scope and nature of the archaeological surveys, in particular the extent of trial trenching, required for this particular Scheme. This was the Applicant's preferred drafting, which is considered to be suitable and sufficient. The Applicant did not consider that there would be a change to the approach proposed unless the County Council's archaeologist changed their position.</p> <p>Ms Brodrick noted that the ISH was taking place prior to the Applicant's responses to relevant representations and the draft statement of common ground being published at Deadline 1. There will be an opportunity for the detail of the written scheme of investigation to be discussed at a future issue specific hearing with experts present to provide further details of their positions to the ExA. When questioned about the drafting of Requirement 12 in the draft DCO, Ms Brodrick explained that the Applicant felt that it would be appropriate for the Secretary of State to decide to approve the WSI rather than the relevant planning authority. She confirmed that the drafting of the requirement meant that the Secretary of State would be confirming that the Applicant should comply with the written scheme of investigation and no further approval would be needed. Ms Brodrick added that this position has been set out in detail in the Applicant's written responses and envisaged it being explored further during the Examination.</p>
6g	The Applicant was asked to add the WSI to the list of documents to be certified under Schedule 14 as indicated in Article 2.	<p>Ms Brodrick confirmed that this omission would be corrected in the next version of the draft DCO.</p> <p><b>Post hearing note:</b> <i>The Applicant confirms that this omission has been corrected in the version of the dDCO submitted at Deadline 1.</i></p>
	<u>Requirement 19 – Soils Management</u>	
6h	The Applicant was asked to explain how soil resources will be managed during the operational and	Ms Brodrick explained that soil quality will be protected for the duration of construction, operation and decommissioning through measures set out in a Soil Management Plan. Outline measures are set out within the Outline Soil Management Plan [APP-146]

#	ExA Question / Item for discussion	Applicant's response
	decommissioning phases of the Proposed Development and to signpost where/how this is secured in the dDCO.	<p>(section 8.6 deals with operation). A Decommissioning Plan (Requirement 21) will be prepared in accordance with the Outline Decommissioning Statement [APP-338]. This will ensure the potential decommissioning impacts are minimised.</p> <p>Ms Brodrick added that if it is more appropriate to leave the cables in situ then this will be done. Decommissioning is currently set out at a high level as the full details are not yet known. Measures to preserve soil quality will, however, form part of the detailed decommissioning plan.</p> <p>The Applicant agreed to amend referencing errors relating to the naming of the Soil Management Plan in its consistency check.</p> <p><b>Post hearing note:</b> The Applicant confirms that referencing errors relating to the naming of the Soil Management Plan have been amended in the dDCO submitted at Deadline 1.</p>
	<u>Requirement 21 – Decommissioning and restoration</u>	
6i	The Applicant was asked to explain why a 12-month delay is required between its decision to decommission and the submission of a decommissioning plan to the relevant planning authority.	<p>Ms Brodrick explained that the Applicant intended to update this to include a notification requirement to make clear to discharging authorities that the period has begun.</p> <p>She added that this is in keeping with other projects. The requirement does not require there to be a 12-month delay between the decision to decommission and the submission of a decommissioning plan to the relevant planning authority. Rather, the undertaker has up to 12 months to prepare the decommissioning plan following notification. It is anticipated that the undertaker will consult with various stakeholders and host authorities prior to submitting the plan for approval based on the requirements and industry guidelines for decommissioning at that time, which may take some time.</p> <p>It is possible that the decision to decommission could be made at short notice, for reasons outside of the Applicant's control, and the requirement therefore needs to allow for sufficient time to prepare all of the documents and permit informal engagement to take place.</p> <p>In response to ExA questioning relating to consultation on the decommissioning plan, the Applicant agreed to give further thought to what is contained in the decommissioning strategy but stated that 12 months is standard.</p> <p><b>Post hearing note:</b> The Applicant has amended the drafting of requirement 21 in the dDCO submitted at Deadline 1. Please see the Applicant's response to Action 2 in the table below.</p>
6j	Please can the Applicant explain how decommissioning will be secured within the 40-year period assessed in the ES.	n/a
6k	Sturton by Stow Parish Council queried the inclusion of "restoration" in this requirement and whether the return to agricultural land should be specified here. The ExA asked whether it was the Applicant's intention for restoration to be covered here.	Ms Brodrick explained that decommissioning and restoration are both dealt with in the Outline Decommissioning Statement [APP-338], adding that restoration is a part of decommissioning. This is addressed in the plans (which have different references depending on the element of the project). As provided in paragraph 2.1.5 of the Outline Decommissioning Statement, where land is agricultural, it will be restored to agricultural land.

#	ExA Question / Item for discussion	Applicant's response
6l	7000 Acres raised queries about the trigger for decommissioning.	Ms Brodrick reiterated that the Applicant will provide further detail on why the Applicant is not proposing a time limit for the Scheme and how this has been assessed. With respect to decommissioning, she explained that it would not necessarily be appropriate for it to be triggered automatically by on generation ceasing as there could be a number of reasons why the Scheme might need to temporarily pause the export of electricity to the grid. Currently, the timing of decommissioning is the Applicant's decision.
<b>Schedule 9 – Deemed Marine License Under the 2009 Act</b>		
6m	The Applicant was asked to confirm whether the wording of this Schedule had been agreed with the MMO, and if not, to provide an update on discussions including when it expected such agreement will be reached.	Ms Brodrick explained that discussions are ongoing with MMO in respect of issues raised in the Gate Burton Energy Park Examination, and so the intention was to carry across the agreed provisions into the dDCO once agreement is reached with the MMO. The reason for including this provision at this point was that there was no guarantee that existing exemptions for a marine licence would apply for the Scheme at the point of construction. A deemed marine licence had therefore been included in the dDCO to ensure deliverability.
<b>Schedule 17 – Procedure for Discharge of Requirements</b>		
6n	The ExA noted that this is a bespoke procedure. The Applicant will be asked to explain what consultation has taken place with the local planning authorities and other consenting bodies on the wording of this Schedule.	<p>Ms Brodrick confirmed that a number of amendments will be made to this Schedule in the version of the dDCO submitted at Deadline 1, including relating to the time limits for approval. In addition, provision relating to fees, as agreed for the Gate Burton Energy Park draft DCO, will be included in the updated dDCO. There will be an increase from 6 to 8 weeks for a decision for most requirements and to 10 weeks for detailed design.</p> <p>The Applicant notes that West Lindsey District Council raised concerns around the number of documents that could arrive for approval at the same time across this and other projects. Mr Sheikh objected to the deemed approval provision (see paragraph 2(2) of Schedule 17) and stated that there should be an ability to agree an extension.</p> <p>The Applicant notes that Lincolnshire County Council welcomed the inclusion of provisions for fees for discharging requirements in the dDCO. In relation to time scales, Mr McBride stated that he believed Lincolnshire County Council could accept 10 weeks as the period for determining the requirement.</p> <p>Mr Phillips explained that the principal issue is one of urgency, as set out in the National Policy Statement. This applies beyond the grant of the DCO it relates also to when the electricity is generated. He explained that this is not a matter of squeezing local authorities, but rather ensuring the urgency set out in national policy can be deployed with speed. Mr Phillips agreed that the Applicant would confer with the other solar applicants and provide an update on timescales at a future deadline.</p> <p>In response to a query from Ms Monger, on behalf of the Environment Agency, relating to the length of time for consultation of the discharge of requirements, Ms Brodrick explained that it is the Applicant's intention to align Schedule 17, paragraph 3(3) with the 20-working day limit agreed in the draft DCO for the Gate Burton Energy Park. In relation to paragraph 4(2)(c) on the subject of appeals, Ms Brodrick stated that she did not believe this had been amended in the draft DCO for the Gate Burton Energy Park, and this would therefore need to be taken away and considered.</p> <p><b>Post hearing note:</b> Schedule 17 to the dDCO has been updated so that the drafting of the Schedule aligns with the latest drafting of the Gate Burton draft DCO, including in relation to fees and timescales for approvals and consultation. It is the Applicant's intention to keep the draft of the Schedule under review to take account of any further amendments that are made to the Gate Burton DCO. The Applicant further confirms that paragraph 4(2)(c) has not been amended in the dDCO as it is important for any appeals to be dealt with promptly.</p>

#	ExA Question / Item for discussion	Applicant's response
6o	The Applicant was asked to explain how the costs of the relevant local planning authorities associated with the discharge of requirements will be met under the Schedule.	This agenda item was dealt with at agenda item 6n.
<b>Agenda Item 7 - Schedules 3 to 8</b>		
For each of the Schedules below the Applicant was asked to respond to the questions posed and other IPs were invited to provide any comments or observations on the matters listed.		
<b>Schedule 4 – Streets Subject to Street Works</b>		
7a	The Applicant was asked to explain the difference between the 'streets plan' and the 'streets to be stopped up plan' (which also appears in Schedule 5 and Schedule 8). The Applicant was asked to identify the latter in the application documents.	This was noted earlier in the ISH as a typographical error to be corrected in the next version of the dDCO submitted at Deadline 1. The correct reference is to the Streets Plan <b>[AS-010]</b> .  <b>Post hearing note:</b> <i>The Applicant confirms that these references have been corrected in the version of the dDCO submitted at Deadline 1.</i>
<b>Schedule 5 – Alteration of Streets</b>		
7b	The Applicant was asked to explain the extent of the alterations being proposed in column 3 of Schedule 5 (Parts 1 and 2) and why these are not specified in this Schedule.	Ms Brodrick stated that the intention would be to put that detail (relating to permanent and temporary alteration of the layout of streets) in the management plans rather than the Schedule, but discussions relating to the inclusion of further detail in the Schedule would be taken away and considered further.  <b>Post hearing note:</b> <i>The Applicant has included further detail relating to the extent of the alterations being proposed in column 3 of Schedule 5 (Parts 1 and 2) in the updated Outline Construction Traffic Management Plan submitted at Deadline 1 <b>[EX1/C6.3.14.2_A]</b>. Please see the Applicant's response to Action 14 in the table below.</i>
7c	Article 10 distinguishes between the highway authority and the street authority. The Applicant was asked whether such a distinction should be carried through to Part 1 of Schedule 5 (i.e., should it make clear which streets are maintained by the highway authority and which are maintained by the street authority)?	Ms Brodrick explained that the Applicant does not consider it necessary to specify which streets are maintained by the highway authority in Schedule 5 unless this is specifically desired, as this information is kept by the highway authority and could change over time. At the point of constructing the works, the Applicant will need to identify whether the highway authority or street authority is the relevant body.
<b>Agenda Item 8 – Schedule 14</b>		
8	<b>Schedule 14 – Documents and Plans to be Certified</b> <u>Latest versions and updates schedule 17</u> Annex G of the Rule 6 letter requests that the Applicant provide a schedule of the latest versions of the Applicant's submission documents and documents to be certified.	Ms Brodrick explained that a Guide to the Application will be submitted at each deadline to identify where new versions of documents have been submitted. Where documents to be certified have been updated then Schedule 14 will also be updated.

#	ExA Question / Item for discussion	Applicant's response
	<p>a) The Applicant was asked to set out how it intends to respond.</p> <p>b) The Applicant was asked to set out how it intends to update its application documents during the Examination. For example, to what extent did it intend to update the Environmental Statement to address clarifications identified during the Examination?</p> <p>c) The Applicant was asked to set out its criteria for identifying the documents to be certified under Schedule 14.</p> <p>d) The Applicant was asked to review the dDCO and ensure all documents to be certified are included in the Schedule.</p>	
<b>Agenda Item 9 – Schedule 16 – Protective Provisions</b>		
9	<p><b>Progress updates</b></p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of progress in relation to Statutory Undertakers, Protective Provisions, and any side agreements, that is updated during the Examination.</p> <p>a) The Applicant was asked to set out how it intends to respond.</p> <p>b) The Applicant was asked to summarise the progress made for each Statutory Undertaker and each Protective Provision, setting out any outstanding matters, the next steps to be taken, and the progress anticipated by the close of the Examination.</p> <p>c) The Statutory Undertakers and other parties present that would benefit from the Protective Provisions were asked to comment.</p>	<p>Ms Brodrick explained that an update on the status of negotiations with statutory undertakers will be provided at Deadline 1.</p> <p>The Applicant is currently in discussions with each statutory undertaker regarding the drafting of the protective provisions and associated side agreements, with some requiring bespoke protective provisions. Ms Brodrick added that some protective provisions are already included in the dDCO and some were to be included in the next version. The Applicant is confident that agreement will be reached prior to the end of the Examination and is working towards this. If the protective provisions are not agreed, the Applicant will be provide further justification as to how the tests set out in s127 and s138 of the Planning Act 2008 have been met.</p> <p>Ms Brodrick particularly noted that in relation to:</p> <ul style="list-style-type: none"> <li>• Network Rail – property agreements were under discussion and once agreed the Applicant would be able to make progress with the protective provisions; and</li> <li>• The Canal and River Trust – the form of protective provisions had been agreed and would be included in the updated dDCO at Deadline 1 as well as a clarification to Article 6.</li> </ul> <p>Ms Brodrick agreed to make some amendments to the wording in Article 6(1)(i) to ensure that the Burton on Trent and Humber Navigation Act 1887 is not disapplied to address the Canal and River Trust's concerns.</p> <p>The Applicant also agreed to make clear that the disapplication of the Environmental Permitting Regulations only applies in relation to flood permitting activities.</p>
<b>Agenda Item 10 – Other Consents</b>		
10	<p><b>Progress updates</b></p>	<p>Ms Brodrick stated that a number of consents had already been mentioned during the hearing, for example, section 135 consent for the Crown Estate and consent to the disapplication and modifications of the legislative provisions listed in Article 6. These are to be discussed and will be set out in the various SoCGs. Regarding other consents and agreements, the Applicant provided a</p>



#	ExA Question / Item for discussion	Applicant's response
	<p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of progress in securing other consents that is updated during the Examination.</p> <p>a) The Applicant was asked to set out how it intended to respond.</p> <p>b) The Applicant was asked to summarise the progress made for each consent, setting out any outstanding matters, the next steps to be taken, and the progress anticipated by the close of the Examination.</p> <p>c) The consenting authorities present were asked to comment.</p>	<p>Consents and Agreements Position Statement with the DCO Application [APP-340]. Ms Brodrick explained that the majority of additional consents will be obtained at the detailed design stage post DCO grant.</p> <p><b>Post hearing note:</b> In response to the ExA's request for a Schedule of progress in securing other consents and licences, the Applicant can confirm that the position is as set out in Table 1 of the Consents and Agreements Position Statement [APP-340].</p>
<b>Agenda Item 11 – Any other matters</b>		
<b>ANY OTHER MATTERS</b>		
11a	<p>Lincolnshire County Council queried whether a section 106 agreement could be considered for a financial contribution in respect of the costs incurred by Lincolnshire Fire &amp; Rescue in relation to the BESS and Requirement 6.</p>	<p>Ms Brodrick noted the point raised and explained that the Applicant would be interested to receive further information relating to the amount of nature of the contribution, in order to satisfy itself that this can be facilitated by way of a section 106 agreement. She added that it would additionally be helpful to understand how energy storage is being approached across all developments, rather than only NSIPs, for consistency. She agreed that this could be discussed further outside of the ISH.</p> <p>Ms Brodrick stated that the Applicant had not been approached about contributions by Lincolnshire Fire &amp; Rescue at this stage. She added that the Applicant had had discussions with Lincolnshire Fire &amp; Rescue prior to submission of the Outline Battery Storage Safety Management Plan [APP-348], but the principle of a financial contribution was not raised.</p> <p>The Applicant agreed to discuss any concerns raised in writing by the Fire &amp; Rescue service and report back on any progress.</p>
11b	<p>Fillingham Parish Meeting and Sturton by Stow Parish Council raised queries regarding time limits for approval, and community reparations in the DCO.</p>	<p>Ms Brodrick explained that there is a balance between providing discharging authorities with sufficient time to approve documents whilst also ensuring NSIPs can be implemented on programme.</p> <p>She further explained that community benefits are outside the scope of the DCO Examination and could not be taken into account by the ExA or the Secretary of State in the planning balance. Other matters relating to wider socio-economic benefits, such as an employment plan, and skills and supply chain plan, are planning related issues which can be considered in the planning balance and which form part of DCO application at Requirement 20. Community benefits are something that is being considered by the solar industry on a wider scale but are currently part of the consenting process.</p> <p>In response to queries relating to community benefits, Mr Elvin on behalf of the Applicant confirmed that the Applicant is currently considering the appropriate level of community benefit for this Scheme. He explained that he works with a solar trade association of larger NSIPs which are working to align on this issue and are hoping to set out the industry approach on this topic shortly.</p>

List of actions for the Applicant and other parties following the DCO Issue Specific Hearing 1 (Wednesday 6 September)

No	Party	Action	Deadline	Applicant's Response
1	Applicant	<b>Article 2</b> - Review the definition of 'Authorised Development' in Article 2.	Deadline 1	<p>The Applicant has reviewed the definition of "authorised development" and does not consider that any amendments are required. A definition of authorised development, encompassing both Schedule 1 (authorised development) and other development under section 32 of the Planning Act 2008, is well precedented in DCOs generally, including the following solar DCOs:</p> <p>The Little Crow Solar Park Order 2022</p> <p>The Longfield Solar Farm Order 2023</p> <p>This drafting is also used in the following solar DCOs, presently in the Examination or Decision stages:</p> <p>Mallard Pass Solar Project</p> <p>Gate Burton Energy Park</p> <p>Heckington Fen Solar Park</p> <p>Sunnica Energy Farm</p>
2	Applicant	<b>Requirement 21</b> - Update Requirement 21 to include notification requirements and consider how decommissioning will be secured within the 40-year period.	Deadline 1	<p>Requirement 21 (decommissioning and restoration) has been amended in the draft DCO submitted at Deadline 1 to require the decommissioning plan to be provided to the relevant planning authority at least 12 months before the intended date of decommissioning unless otherwise agreed with the relevant planning authority.</p> <p>The Environmental Statement stated that the operational period was anticipated to be approximately 40 years and for the purposes of the environmental impact assessment (EIA) it had been assumed that decommissioning would not be earlier than 2066. The Environmental Statement made it clear in Chapter 2 (EIA Process and Methodology) and Chapter 4 (Scheme Description) that the Applicant was not seeking a temporary or time limited consent and the EIA was undertaken on that basis.</p> <p>In order to address concerns raised about the Scheme potentially being in situ in perpetuity, a new sub-paragraph (1) has been added to Requirement 21 to require decommissioning to take place within 60 years of the final commissioning date. A 60-year period has been chosen to provide flexibility for the Scheme to continue operating</p>

No	Party	Action	Deadline	Applicant's Response
				<p>where the solar PV panels continue to generate electricity after the average lifespan of 40 years has passed.</p> <p>The operational management plans which contain details of the mitigation measures to be maintained during operation are secured by the requirements in Schedule 2 to the draft DCO and must be implemented until the Scheme is decommissioned (regardless of the length of the operational period).</p>
3	Applicant	<b>Articles 8, 9 and 10</b> - Update Articles 8, 9 and 10 in order to ensure consistency with the wording on other dDCOs currently in Examination.	Deadline 1	The draft DCO provided at Deadline 1 includes amendments to article 9(4) to enable a street authority to provide consent in the form reasonably required by it. No further changes were considered necessary as a result of this action.
4	Applicant	<p><b>Article 11</b> - Review Article 11 and consider whether streets and public rights of way would be better dealt with separately.</p> <p>Provide further justification for the inclusion of Article 11(1)(b).</p>	Deadline 1	<p>Article 11 provides a single unified regime to be followed by the undertaker in respect of the temporary stopping up of streets and public rights of way. This regime replaces that found in the Highway Act 1980, which provides the power widely used by local authorities and others to temporarily stop up and divert streets and public rights of way, these both being forms of <i>highway</i>, during temporary works.</p> <p>The provisions of article 11 extend beyond highways in order to encompass the broader definition of 'street' (that includes private roads). It is not considered necessary or preferable to treat streets and public rights of way separately. This would result in the duplication of the regime, despite the inherent similarity between highways (including PRoW) and streets for the purpose of this article.</p> <p>In respect of article 11(1)(b), this is required in order to allow motor vehicles to use PRoW to access the solar PV sites, either during construction or operation or both. The authorisation of this distinct category of vehicles is considered preferable to, and more proportionate than, a requirement to construct a new, bespoke access to each solar PV site where a suitable highway exists for this purpose, but for the restriction on motor vehicles. The Applicant has sought to use existing accesses and highways wherever possible in order to minimise the environmental effects of constructing new accesses; this includes, in some circumstances, the use of footpaths.</p>

No	Party	Action	Deadline	Applicant's Response
				The Applicant has updated Outline Public Rights of Way Management Plan submitted at Deadline 1 [EX1/C6.3.14.3_A] to include a requirement to repair any damage caused by the use of motor vehicles on a public right of way pursuant to Article 11(1)(b).
5	Applicant	<p><b>Article 12</b> - Confirm whether APs have been made aware that the Applicant is not required to repair damage to private roads and that the matter will be dealt with by way of compensation.</p> <p>Identify similar provisions in made DCOs that deal with the use of private roads during both construction and maintenance.</p> <p>Update Access Plan to identify private roads that might be affected by Article 12.</p> <p>Review traffic management plans and consider whether obligations therein would cover private roads.</p>	Deadline 1	<p>Please see the Applicant's response to agenda item 5h above. The drafting in article 12(1) that enables the use of private roads during both construction and maintenance has precedent in:</p> <p>Boston Alternative Energy Facility Order 2023 (Article 16);</p> <p>Southampton to London Pipeline Development Consent Order 2020 (Article 14); and</p> <p>M25 Junction 28 Development Consent Order 2022 (article 14).</p> <p>The voluntary agreements being negotiated with landowners require the Applicant to repair any damage caused to private roads as a result of the Scheme and restore any private roads to their pre-construction condition once the access licence has terminated. The powers under Article 12 will only be exercised where a voluntary agreement has not been possible and the Applicant therefore considers that compensation is an appropriate remedy between the landowner and the Applicant in that scenario.</p> <p>The Streets Plan submitted at Deadline 1 [EX1/C2.13_B] has been updated to identify the private roads within the Order limits.</p> <p>The Outline Construction Traffic Management Plan submitted at Deadline 1 [EX1/C6.3.14.2_A] has been updated to include a requirement to undertake a pre-construction condition survey and repair any damage caused to private roads during the construction of the Scheme.</p>
6	Applicant	<b>Article 23</b> - Remove Article 23(2)(c) in light of the SoS decision in Longfield Solar Farm.	Deadline 1	This sub-paragraph has been removed from the draft Order submitted at Deadline 1.
7	Applicant	<p><b>Article 38, 39 and Schedule 13</b> - Review Article 38, Article 39 and Schedule 13 and consider whether, and if so how, these powers can be limited to the parameters assessed in chapter 9 (Ecology) of the ES.</p> <p>Provide further explanation of its approach to the removal of hedgerows in the dDCO.</p>	Deadline 1	<p>The Applicant has reviewed the drafting of the powers set out in Articles 38 and Schedule 13. The powers are deliberately broad as the detailed design of the Scheme is not known at this stage.</p> <p>Whilst the Applicant has applied for the power to remove any part of the hedgerows within the Order Limits and listed in Schedule 13, this is power is controlled and limited by the management plans secured by the Requirements. The Applicant has amended Article 38 to make it clear that the powers must be exercised in accordance</p>

No	Party	Action	Deadline	Applicant's Response
				<p>with the Landscape and Environmental Management Plan approved pursuant to Requirement 7. In addition, Schedule 13 has been amended to make it clear that it is only "part of" the hedgerow (and not the whole of it) that is to be removed.</p> <p>In response to comments made by the ExA and by Interested Parties at both ISH1 and OFH1, the Applicant has produced <b>Hedgerow Removal Plans [EN010133/EX1/C8.2.3]</b> providing indicative details of the hedgerows that are currently proposed to be removed temporarily to facilitate the construction of the Scheme and those that are currently proposed to be removed during the occupational life of the Scheme. This is appended to the Outline Landscape and Ecological Management Plan submitted at Deadline 1 [EX1/C7.3_A]. The final Landscape and Ecological Management Plan that is secured through requirement 7 of the DCO will need to set out the final details for hedgerow removal and will be approved by the relevant planning authority.</p>
8	Applicant	<b>Article 49</b> - Keep the ExA updated on discussions with the Crown Estate.	Ongoing	The position remains the same as was communicated to the ExA during ISH1 (see item 5r above). The Applicant had been in contact with the Crown Estate's solicitors and will endeavour to obtain consent prior to the close of the Examination. However, as the Crown Estate is involved in a number of DCOs, consent can often be delayed.
9	Applicant	<b>Schedule 1</b> - Review final paragraph of Schedule 1. The ExA notes that this has not been included in other made Solar DCO's.	Deadline 1	<p>The final paragraph of Schedule 1 provides for "<i>further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</i>"</p> <p>As explained at ISH1, the Applicant has sought to list all of the activities that constitute development in Schedule 1. However, the detailed design of the Scheme has not yet been finalised and therefore a degree of flexibility is required. This drafting, intended to ensure that, irrespective of flexibility in how the authorised development is designed, the effects will remain within the assessed <i>Rochdale Envelope</i>, has precedent in many made energy DCOs, including:</p>

No	Party	Action	Deadline	Applicant's Response
				<p>Schedule 2, paragraph 1(4) of the Hinkley Point C (Nuclear Generating Station) Order 2013;</p> <p>Article 40, Schedule 13, paragraph 9, and Schedule 13, paragraph 9 of the East Anglia ONE North Offshore Wind Farm Order 2022;</p> <p>Schedule 1, Part 2, paragraph 19 of The Cleve Hill Solar Park Order 2020;</p> <p>Schedule 1 of the Riverside Energy Park Order 2020, at the final paragraph.</p> <p>Similar drafting is provided for in the Little Crow Solar Park Order 2022 and the Longfield Solar Farm Order 2023 where associated development must 'fall within the scope of the work assessed by the environmental statement'.</p> <p>The Applicant considers that both approaches to drafting result in the same outcome, namely that the authorised development cannot be designed and constructed in a way that exceeds the <i>Rochdale Envelope</i>. Given the extensive precedent of the Applicant's preferred drafting, no amendments have been made to this provision within the draft DCO provided at Deadline 1.</p>
11	Applicant and Lincolnshire County Council	<p><b>Requirement 12</b> - Provide the ExA with details of the areas of disagreement between the parties in relation to Requirement 12.</p> <p>The ExA requests a joint statement dealing with this specific issue.</p>	Deadline 1	Please see the draft Statement of Common Ground between the Applicant and Lincolnshire County Council submitted at Deadline 1 [EX1/C8.3.10].
12	Applicant	<b>Schedule 9</b> - Provide an update on the discussions that are currently taking place with the MMO and how it proposes to achieve consistency in approach between this and other projects currently being examined.	Deadline 1	As stated in the DCO ISH1, discussions are still ongoing with the MMO in respect of issues raised in the Gate Burton Energy Park Examination, and the intention is to carry across the agreed provisions into the dDCO once agreement is reached with the MMO.
13	Applicant	<b>General</b> - Applicant to update dDCO to ensure that terms are used consistently throughout.	Deadline 1	The Applicant has reviewed the draft DCO and made amendments to defined terms to ensure consistency within the draft DCO provided at Deadline 1.
14	Applicant	<b>Schedule 5</b> - Applicant to provide further explanation of the extent of the alterations	Deadline 1	The Applicant has included further detail relating to the extent of the alterations being proposed in column 3 of Schedule 5 (Parts 1

No	Party	Action	Deadline	Applicant's Response
		proposed in Schedule 5 and why they cannot be specified in more detail.		and 2) in the Outline Construction Traffic Management Plan submitted at Deadline 1 [EX1/C6.3.14.2_A].
15	Applicant/LCC/West Burton DC	<b>Schedule 2</b> - Parties to provide an agreed list setting out who will be responsible for the discharge of the various requirements.	Deadline 1	Schedule 2 of the draft DCO provided at Deadline 1 has been updated to include a breakdown of which authority/ies will be responsible for discharging each Requirement as agreed with Lincolnshire County Council and West Lindsey District Council.