Cottam Solar Project

Written Summary of the Applicant's Oral Submissions & Responses at Issue Specific Hearing 5 and Responses to Action Points

Prepared by: Pinsent Masons LLP

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Cottam
SOLAR PROJECT

Issue Sheet

Report Prepared for: Cottam Solar Project Ltd.
Examination Deadline 3

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#	ExA Question / Item for discussion	Applicant's response
Agenda Item 1 - Welcome, opening remarks and introductions		
1	The Examining Authority (ExA) welcomed participants and read introductions and the public livestream and recording was started.	The following parties introduced themselves: <u>The Applicant</u> • Gareth Phillips, Solicitor and Partner at Pinsent Masons LLP (solicitors for the Applicant) • Claire Brodrick, Legal Director at Pinsent Masons LLP • Eve Browning, Project Development Manager at Island Green Power <u>Lincolnshire County Council</u> • Neil McBride, Head of Planning • Stephanie Hall, Counsel at Kings Chambers <u>West Lindsey District Council</u> • Shemuel Sheikh, Counsel, Kings Chambers • Russell Clarkson, Development Manager • Alex Blake, Atkins <u>7,000 Acres</u> • Mark Prior <u>LNT Aviation (Blyton Park Driving Centre)</u> • Alan Mugglestone <u>Local Residents</u> • Simon Skelton
Agenda Item 2 - The purpose of the hearing and how it will be conducted		
2	The ExA introduced the hearing, including that: • the purpose of the hearing is for the ExA to further consider the drafting of the applicant's dDCO and	The ExA explained that the purpose of the hearing was to examine the draft DCO (dDCO), discussing related matters and inviting all parties to make representations about it. At the time of the hearing, the dDCO was Revision C of the dDCO submitted at Deadline 2 [REP2-004].

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	related matters, and invite certain parties to make oral representations about them; • the hearing is subject to the powers of control of the ExA, as set out in the Planning Act 2008 and supporting legislation; • the ExA will invite parties to speak and will ask questions at relevant points on the agenda and when it otherwise considers necessary; and • all comments, questions and answers are to be directed to the ExA and not directly to any other party.	
Agenda Item 3 – Applicant's update		
3	• The Applicant will be asked to provide an update on any proposed changes to Version C of the dDCO; and • The Applicant will be asked to provide an update on any expected changes it anticipates will be necessary to align the dDCO with other DCOs currently being examined.	Ms Brodrick confirmed that protective provisions for the benefit of Lincolnshire Fire and Rescue would be included in the draft DCO submitted at Deadline 3. The protective provisions include a requirement to facilitate a site familiarisation visit prior to the commissioning of the battery energy storage system (BESS), and then to facilitate annual visits if required. Payment would be made for the initial site visit, with subsequent annual payments being made if annual site visits are undertaken. The Applicant is also keeping track of any changes made in the draft DCO for the Gate Burton Energy Park and will make any updates required. She added that a change application version of the draft DCO has been produced, and that these amendments would be incorporated into the Deadline 4 draft DCO if the change application were to be accepted. *Post hearing note: An updated dDCO [EN010133/ EX3/C3.1_E] has been submitted for Deadline 3. The Change Application was accepted on 18 December 2023 and these changes will be incorporated into the draft DCO submitted at Deadline 4.*
Agenda Item 4 – Main discussion points		
4	• Article 17 – the Applicant will be asked to explain why this article is necessary; • Article 18 - the Applicant will be asked to provide clarification on its response to ExQ1.1.9 and its position as stated in the Explanatory Memorandum [APP-017]; • Article 35(3)(c) – the Applicant will be asked to provide further justification for the retention of this provision;	*Article 17- removal of human remains* The ExA asked the Applicant to explain the approach to drafting article 17 (removal of human remains), and why its inclusion was considered necessary, referring to the Applicant's response to ExQ 1.1.8 in the Applicant's Responses to ExA First Written Questions [REP2-034] and the possible Anglo-Saxon burial ground within the Order Limits over which the Applicant is proposing open excavation. He noted that it was assumed this would be covered by the WSI [APP-131], and also noted that the article had been removed by the Secretary of State from the Longfield Solar Farm Order 2023. Ms Brodrick responded that the Applicant's understanding is that where there is a potential for human remains to be found, this article is included in the DCO. Its aim is to streamline the different processes that apply in dealing with such remains so that there are clear timeframes and to ensure the deliverability of a nationally significant infrastructure project (as explained in 4.4.2 of Explanatory Memorandum [APP-017]). It is not seeking to remove any protections or delay with the remains in a different way. The

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	• Requirement 21 - The Applicant will be asked to provide further justification for the 60 year period included in Requirements 21. The Applicant will also be asked to signpost where in the ES it is stated that the scheme was undertaken on the basis that it would not be time limited; and • Article 38 (Hedgerows) – the ExA will seek clarification on the approach to the removal of hedgerows as set out in the dDCO.	Applicant's understanding is that where surveys have identified the possibility of finding human remains, it is appropriate and proportionate to include this article, in addition to the WSI, depending on the nature of the remains. The Applicant's surveys had identified the possibility of remains being found and therefore the inclusion of the power was appropriate and proportionate. She noted that she did not believe there had been any objection to the inclusion of this article from the local authorities, who would usually manage the process under the other regimes if human remains were discovered. The ExA asked if the Application thought the position differed from Longfield Solar Farm Order 2023. Ms Brodrick confirmed this was correct, given that the Applicant's environmental surveys indicated that there is potential for archaeological findings within the Order limits. Therefore, the circumstances are factually different to the Longfield Solar Farm Order 2023, as the Applicant is not able to rule out the presence of any human remains. *Article 18 – protective works to buildings* The ExA asked the Applicant to provide clarification on its response to ExQ 1.1.9 [REP2-034] and its position as stated in the Explanatory Memorandum [APP-017], given that the latter refers to the potential for there being buildings within and in proximity to the Order land that might require protective works. Ms Brodrick responded that the Applicant has updated the Explanatory Memorandum for the Change Application to be consistent with the response to ExQ 1.1.9, which will be carried through to the Deadline 3 version of this document. *Post hearing note: The Explanatory Memorandum has been updated for Deadline 3 [EN010133/EX3/C3.2_B].* She added that the Applicant is not aware of any existing buildings in the Order limits, however there is an extant planning permission for buildings (agricultural barns) within the Order limits and therefore the potential need for protective works, and so the inclusion of this power was considered proportionate. *Article 35(3)(c) – consent to transfer benefit of the Order* The ExA asked the Applicant to provide further justification for the retention of Article 35(3)(c), noting that similar provisions had been removed from other made Orders and referring to the response to ExQ 1.1.12 [REP2-034]. Ms Brodrick responded that reasons were provided for the exception to be included for this project in the Applicant's response to ExQ 1.1.12. She noted that the two examples provided related to the provision of habitat mitigation areas and permissive path, both elements of the Scheme that would not necessitate a licence under the Electricity Act 1989. This Scheme has a different geographical extent to the Longfield Solar Farm Order 2023 site. That site is primarily contiguous and much smaller, whereas for this Scheme there are a number of individual parcels that are spread out, with more distinct areas such as those for the habitat mitigation areas and permissive path which are geographically distinct from the generating stations. Ms Brodrick noted that the Applicant considers the factual circumstances are different for this Scheme compared to Longfield, so it is the Applicant's preference to retain this wording, although she noted that if the Secretary of State considers that they do not want to provide this exception for this Scheme, they can remove it, as they have done for the Longfield Order. Ms Brodrick said that the Applicant would consider the wording of the exception to see whether the language could be amended to include a carve out to make clear that article 35(3)(c) would not apply to the elements of the Scheme that would require a generation licence.

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		Post hearing note: The Applicant has amended Article 35(3)(c) in the dDCO [EN010133/ EX3/C3.1_E] submitted for Deadline 3 to make it clear that this exception applies in relation to specific work numbers only and notes that this is consistent with the approach being taken in the draft DCO for the Mallard Pass Solar Farm. *Requirement 9 (Biodiversity Net Gain)* The ExA asked the Applicant to explain the drafting of requirement 9 relating to Biodiversity Net Gain (BNG). The ExA asked whether the Applicant was proposing the specific % set out in the BNG strategy, and asked the Applicant to confirm if the benefits of BNG in general were being put forward as a benefit by the Applicant, or specific percentages. Ms Brodrick responded the wording of requirement 9 relates to the Biodiversity Net Gain Strategy being substantially in accordance with the Outline Landscape and Ecological Management Plan (OLEMP) [REP2-026]. The OLEMP includes the range of different landscape and ecological mitigation and enhancement measures that are being proposed for this Scheme. A BNG calculation has been undertaken to establish what the percentages would be for the measures that are set out in the OLEMP. The final LEMP must be substantially in accordance with the OLEMP and therefore the Applicant's position is that the benefit of the BNG is something that can be taken into account in the planning balance. Ms Brodrick noted that BNG is an evolving area and there is currently no statutory obligation for nationally significant infrastructure projects (NSIP) or other projects to provide BNG. She noted it will be some time before the process for NSIP projects becomes a statutory obligation. She also noted that the previous week a new metric was published for the calculation of BNG. Ms Brodrick stated that the Applicant's position is that it is committed to delivering the mitigation that is set out in the OLEMP. However, there is a significant risk that the metric that applies at the point of construction may well result in a different BNG percentage being attributed to that mitigation. She added that the Secretary of State chose to amend the wording in the Longfield Solar Farm Order 2023 so that the calculation was on the basis of the metric that applied at that point in time (of the discharge of the requirement), not the metric that the Applicant there had used as part of their DCO application material. Ms Brodrick stated that Applicant's position is that there is a risk that the metric could change, and therefore the Applicant could be in a position where the percentage changes over time. The actual elements of the mitigation are committed to and are secured through the OLEMP. The Applicant considered that the Secretary of State can take into account the delivery of that mitigation as part of the planning balance, however the BNG percentage should not be specified in the draft DCO as it could change if the metric changes. The ExA noted the recent correction order to the Longfield Solar Farm Order 2023, noting that the Applicant could take a similar approach to the approach in that (corrected) Order. Ms Brodrick responded that the Applicant's position is that because the LEMP itself needs to be approved by the relevant planning authority and the BNG Strategy under requirement 9 also needs to be approved by the relevant planning authority in consultation with the relevant statutory nature conservation bodies, the discussions as to the appropriate percentages that will be delivered by the Scheme and the metric to be used will take place via the discharge of the requirements as they are currently drafted, and that there is therefore no need to include the specific percentages in the DCO.

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		In response to further questions from the ExA relating to the Secretary of State being able to consider specific BNG percentages in the planning balance in other made DCOs, such as the Longfield Order, Ms Brodrick responded that, as the requirements are drafted, the Secretary of State would not be able to refer to specific percentages in the planning balance, but the delivery of the actual measures would be able to be relied upon for the reasons mentioned above. She also noted that slightly different approaches are being taken in relation to the Mallard Pass Solar Farm DCO and the Gate Burton Solar Project DCO as compared to the Longfield DCO. In response to further comments from the ExA regarding aligning the approach for the Scheme with the Longfield DCO, Ms Brodrick noted that there are various approaches being taken across energy projects. Another approach taken by developers is to secure a greater than 10% percentage on the face of the DCO, then having the more detailed provisions set out in an outline plan .She noted it is something the Applicant is keeping under review and agreed to take away the point to consider whether it would be advantageous for the Applicant to put forward a different proposal. In response to a further question from the ExA, Ms Brodrick noted that the approach being taking is consistent with the Hornsea Four Offshore Wind Farm Order 2023, so is precedented. She noted that since that was granted, the measures for BNG have evolved, and agreed to find examples of different approaches taken. Finally she noted that a wide range of approaches are currently being taken on this particular issue, because it is evolving, and that there is currently no certainty as to how the regime will apply to NSIP projects once it does come into force. *Post hearing note: Please see the Applicant's response to Action 1 below.* *<u>Requirement 21</u>* The ExA asked the Applicant to provide further justification for the 60-year period included in requirement 21, and to signpost where in the Environmental Statement (ES) it is stated that the Scheme was undertaken on the basis that it would not be time limited. Ms Brodrick responded that, in response to comments made previously in the Examination, at Deadline 2, the Applicant submitted the Review of Likely Significant Effects at 60 Years [REP2-058]. There was also an update to Chapter 23 of the of the ES [REP2-010] also submitted at Deadline 2. The introductory section of [REP2-058] sets out the purpose of the document and lists extracts from the ES where the operational life of the Scheme and a typical 40 year period were referred to. In various places in the introductory chapters of the ES it was specifically noted that the DCO application did not seek a temporary or a time limited consent. In response to comments about the Scheme existing in perpetuity, which was not the aim, as there was a commitment to decommission from the outset, the reference to the 60 year time limit has been added to requirement 21. As part of that exercise, the Applicant's environmental consultant team undertook a review of every chapter in the ES setting out the wording in the ES and whether an operational period of up to 60 years would have any implications on the conclusions of the ES. Document [REP2-058] then goes through each of the environmental topics on that basis. Ms Brodrick added that Chapter 23 was also updated to include a specific comment relating to an operational period of up to 60 years, to provide clarity as to the conclusions of the ES and how that sits alongside the Review of Likely Significant Effects at 60 Years [REP2-058]. Review of Likely Significant Effects at 60 Years [REP2-058] is intended to explain the exercise that was undertaken, and then the conclusions are set out in the updated version of Chapter 23.

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		Ms Brodrick reiterated that ES Chapter 4 [REP-012] makes it clear that the operational life of the Scheme is anticipated to be 40 years. Chapter 4 then clearly states that the DCO application was not seeking to time limit the development. She referred to paragraphs 1.1.1 and 1.1.2 of the Review of Likely Significant Effects at 60 Years [REP2-058] which specify that the DCO application was not seeking to be a temporary or time limited consent. However, for the purposes of an EIA, a typical period had to be assumed for the purposes of that exercise and 40 years was this was the typical period used for that. Decommissioning no earlier than 2066 was also assumed for the purposes of that exercise. However, it was within the minds of the authors of the ES that the DCO application was not seeking to be time limited, and so when they were assessing the mitigation that might be required, they were considering whether some form of time limit may be necessary as a mitigation for the impacts that have been identified. Ms Brodrick referred to paragraph 2.10.65 of NPS EN-3 (November 2023 version), noting there is flexibility in the approach applicants can take: *"Applicants should consider the design life of solar panel efficiency over time when determining the period for which consent is required. An upper limit of 40 years is typical, although applicants may seek consent without a time-period or for differing time-periods of operation."* She noted that the approach initially taken for the Scheme was for there not to be a time limit. However, in response to comments, the Applicant has put forward a 60 year time limit for the reasons mentioned above. A period of 60 years was used because that is becoming the more typical time period as solar projects are evolving. She noted that 60 years is the time period used in the Mallard Pass Solar Farm draft DCO and the Gate Burton Energy Park draft DCO. The Applicant has undertaken a review to see whether there would be any differences to the conclusions on the basis of an operational period of up to 60 years. The conclusion was that there would not be any differences, with the exception of two topics. The first was in relation to climate change where the calculation period would be different resulting in a larger beneficial effect as the Scheme will be operating for longer. The other is flood risk, because the modelling periods for the assessment change over the 60 year time period. However, the conclusion was that any additional risks could be mitigated upon a review of the mitigation in the Scheme and the Operational Environmental Management Plan [REP2-032] at that time. She added that if the Secretary of State is minded to disagree with the Applicant, then they would be able to impose a different time limit should they think that that was appropriate to do so. However the Applicant's position, if a time limit is required, then the Applicant's position is that a 60 year period is appropriate. In response to further questions from the ExA, Ms Brodrick confirmed that the Gate Burton DCO assessed a 60 year time period from the outset. The Mallard Pass Solar Farm took the same initial approach as the Scheme (i.e. no time limit), however a similar exercise was undertaken for that project and the draft DCO now includes a 60 year time limit. Mr Phillips confirmed that the ES authors had undertaken the same exercise for the Mallard Pass Solar Farm as has been undertaken for the Scheme. In response to submissions from LCC and WLDC, Ms Brodrick responded that the approach taken to the ES review is set out in the Review of Likely Significant Effects at 60 Years [REP2-058], which clearly sets out what has been taken into account in undertaking the review. For each topic, there is a column (summary of approach to reviewing the assessment) that clearly sets out what was taken into account as part of the review. She confirmed it was the Applicant's position that sufficient information had been provided. She reiterated that the Applicant was clear from the outset that the DCO application was not seeking a consent that would be time limited, but that it contained a commitment to decommissioning which was taken into account in the assessment. Ms Brodrick added

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		that in terms of the assessment of agricultural land, the commitment to decommissioning was taken into account consistently through the assessment. The question that was asked as part of this review was, did it make a difference to the conclusions whether that decommissioning took place at 40 years or took place at 60 years? The Scheme only includes a very small amount of BMV land (4.1%). The position taken on agricultural land is that there is no loss of land because the Scheme will be decommissioned. She added that the author of the chapter's view was whether the Scheme was decommissioned at 40 years or 60 years, the fact that there would be no loss remains consistent because there is still that commitment to decommissioning. In response to comments from Mr Sheikh on behalf of WLDC in respect of the methodology used, Ms Brodrick responded that the detail needs to be considered in line with the conclusions in the ES. For the topics specified, no residual effects have been identified for a 40 year period, so that conclusion has been reviewed to consider if there would be a change over 60 years, and no change was identified. She stated it was unclear what further information could be provided, but noted further information could be provided if WLDC could be more specific. Mr Phillips responded that one must take the application as a whole. The Applicant has explained the use of a 40-year period for the assessments was indicative and that the effects that were assessed to be the case at 40 years apply for every year that follows that. He stated that LCC and WLDC should consider the information provided by the Applicant and make an assessment based on their own professional judgement, which is what the Applicant's professional advisors have done in reaching the conclusions set out in the Review of Likely Significant Effects at 60 Years [REP2-058]. If LCC or WLDC consider that there might be a change to the conclusions, these should be flagged so that the Applicant can consider them. The more general comments being made by the LCC and WLDC do not move the position forward as it is not clear what further detail the Applicant needs to provide. In response to Mr Prior's submission relating to the assessment of greenhouse gas emissions in ES Chapter 7 [REP-014] and how it has taken account of maintenance requirements, Ms Brodrick responded that the Applicant had responded in writing to the concerns previously raised, and that Mr Prior's position was not accepted. In the Review of Likely Significant Effects at 60 Years [REP2-058], the author of Chapter 7 has set out their explanation of the approach they've taken in terms of considering whether the calculations that were undertaken needed to be reviewed or whether the existing calculations could be used (having regard to a 60 year operational life). The Applicant's position is that there is a beneficial effect as a result of the Scheme, and that that beneficial effect will continue. In relation to the lifetime of the panels, she stated that it is not currently known how long the panels will last for before they need to be replaced, given technological changes. It is thought, based on current technology, that about 40 years would be typical. She noted her understanding that projects that were built some time ago and were anticipated to last for approximately 20 years are still operating. It is therefore conceivable that the panels will be able to operate for longer than 40 years, hence why the Applicant has chosen a maximum 60 year operational period. She referred to the definition of "date of decommissioning" in the draft DCO, which is *"in respect of each part of the authorised development, the date that that part of the authorised development has permanently ceased to generate electricity on a commercial basis"*. Ms Brodrick noted that in the event that the panels ceased to generate electricity permanently, they would have to be decommissioned. In response to a question from the ExA, Ms Brodrick confirmed that the ES has assessed the ad hoc maintenance of individual panels that might break or have a fault in them, but has not assessed the complete replacement of all of the panels over the lifetime of the

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		Scheme. She further noted that the definition of "maintenance" in the dDCO makes clear that the whole of the authorised development cannot be replaced, noting that any individual panel can be replaced but not all of the panels wholesale. She noted the parameters contained in the management plans, particularly the Operational Environmental Management Plan (OEMP) [REP2-032], and assumptions taken into account regarding traffic movements, which constrain what can be done under the definition of maintenance. In response to further questions from the ExA, Ms Brodrick referred to page 6 of the Review of Likely Significant Effects [REP2-058], which refers to paragraphs 5.8.53 and 7.8.54 in Chapter 7 of the ES, there is text setting out what has been taken into account. This considers the replacement of the BESS at least once during the operation of the Scheme, and then states if there was a second further replacement of the BESS, the position is that it is unlikely to give rise to likely significant GHG emissions. In respect of the panels it refers to the percentage of panels replaced based on a rate of replacement over 40 years, and then again over 60 years, and the conclusion is that there would not be significant effects. Any effects could be managed in the OEMP. Ms Brodrick confirmed that the approach would be confirmed in writing. *Post hearing note: Please see the Applicant's response to Action 2 below.* In response to further comments from Mr Prior, Ms Brodrick explained the basis on which maintenance requirements had been assessed in the ES, on a reasonable worst-case assessment basis. She refuted the assertion of Mr Prior that the Applicant had not complied with the Rochdale Envelope approach. Mr Sheikh on behalf of WLDC queried whether there would be a trigger for decommissioning to take place if energy generation ceased, Ms Brodrick responded that it is not guaranteed that the Scheme will definitely be present and operating for the entire 60 years, but the 60-year period is a maximum limit. She stated that there is no policy or environmental impact reason to decommission a renewable generating station that can still operate. She noted that solar panel technology is expected to continue to evolve. Ms Brodrick noted that there is a positive obligation in requirement 21 for the undertaker to notify the relevant planning authority of the intended date of decommissioning, and then to provide a decommissioning plan and comply with that plan. She invited WLDC to suggest any amendments to the current wording of requirement 21. She noted the Applicant's intention to decommission the Scheme once it has permanently ceased to generate electricity. In response to a request from LCC for there to be a time period within which the Decommissioning Plan would be submitted, Ms Brodrick responded that the time periods set out in Schedule 17 of the draft DCO regarding the discharge of requirements would be adhered to, and noted that, so as not to be in breach of a requirement, the onus would be on the Applicant to submit the Decommissioning Plan in good time, to avoid breach of the requirement and risk that the approval of the Decommissioning Plan could be refused. She noted it would not be in the Applicant's interests to submit the Decommissioning Plan without sufficient time for the requirement to be discharged (10 weeks). She noted the risk of it being refused or appealed, and the Applicant would need to ensure there was sufficient time for this process to be undertaken. *Post hearing note: The Applicant has amended Requirement 21 in the dDCO [EN010133/ EX3/C3.1_E] submitted for Deadline 3 to provide greater clarity on the timing of submission of the Decommissioning Plan.* *Article 38 (Hedgerows)*

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		The ExA requested clarification on the approach to the removal of hedgerows as set out in the dDCO, noting this discussion would relate to the mechanism rather than the Applicant's intended approach. Ms Brodrick explained that all of the articles in the DCO need to be read in conjunction with the management plans secured in the DCO. However, the Applicant has considered the concerns raised about how that mechanism would operate for hedgerow removal. In response, the Applicant has amended article 38 to make it clear that the power applies to "part of" each hedgerow, albeit that the whole of each hedgerow is still referred to in the DCO, which is required to enable micro siting of accesses and the cable route at detailed design phase. She noted that, whilst the Applicant knows the widths of the temporary and permanent accesses required for the Scheme and have indicative locations, some micro siting might be required. The table in Schedule 13 has also been amended to make it clear only part of the hedgerow will be removed. Ms Brodrick also added that Article 38(4) makes clear the parts to be removed must be in accordance with the O-LEMP [REP2-026], as secured in requirement 7 of the DCO. The O-LEMP appends the Hedgerow Removal Plans which indicate the hedgerows that will be removed. The ExA asked why the DCO could not refer to maximum widths for the hedgerow removal, given that this is set out in the O-LEMP. Ms Brodrick responded that the powers in Articles 38 and 39 are deliberately broad because the detailed design of the project is not yet known. The Applicant's position is that it is more appropriate for this information to go in the management plans rather than seek a potential maximum width for every entry in the DCO. She agreed that the Applicant would consider updating the O-LEMP to refer to maximum widths of hedgerow removal for accesses and the cable route corridor. At the detailed design stage the exact widths would be known and can be included in the final LEMP submitted to the relevant planning authority for approval. The final width will depend on the configuration of the hedgerows and the location of the access. Ms Brodrick confirmed that when the requirements are being discharged it is for the Applicant to demonstrate to the relevant planning authority that there will be no materially new or different environmental effects from those set out in the Environmental Statement. For example, if the ground conditions in a particular location required an access to be 7.5m wide, the Applicant would need to provide evidence to the relevant planning authority that there would not be any new or materially different environmental effects as a result of that minor change. If a specific width was listed in Schedule 13 to the draft DCO then a non-material change application would need to be submitted for the access to be constructed at a slightly wider width as it would be a strict parameter in the DCO. The Applicant's position is that it is preferable to control the flexibility required for the detailed design in the management plans. *Post hearing note: The Outline Landscape Environmental Management Plan [EN010133/EX3/C7.3_D] has been updated to include clarity on the maximum width of hedgerow that is anticipated to be removed by the Applicant to facilitate access and for the construction of the Cable Route Corridor.* Ms Hall asked how shrubs and trees would be dealt with in the context of the hedgerow removal proposals. Ms Brodrick responded that a hedgerow has a specific definition by reference to Hedgerow Regulations 1997. The application of the article to hedgerows is necessarily limited to those hedgerows which constitute a hedgerow for the purposes of the Regulations. Ms Brodrick reiterated that the requirements apply to all of the powers in the DCO. In terms of how the Applicant constructs, maintains and decommissions the Scheme, it has to comply with the requirements. Therefore, even though there is a broad power

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		in the DCO relating to the felling of trees, for example, the Applicant has to comply with the final LEMP. If that states that a tree must be protected and retained during construction the power in the DCO cannot be used to circumvent that restriction. Ms Brodrick re-iterated that the Applicant must still comply with the LEMP when using the power but noted that it should not be necessary to have to clarify for every article that it must comply with requirements, because of a general provision in Article 3(1) of the draft DCO. The Applicant had added a specific reference in Article 38 to address the concern raised over the extent of hedgerow removal. She also added in relation to the definition of hedgerow that the statutory instrument drafting protocol is that where a term is defined in another piece legislation, there is no need to define it again. Mr Skelton referred to hedges H154 and H155 and noted that he considered these should be removed from the Schedule 13. Ms Brodrick responded that there are a variety of reasons that a hedgerow has been included in Schedule 13, including relating to access requirements along public highways. She noted that the relevant consultant was not available to be explain those particular hedgerows are included, and confirmed that this would be dealt with in writing. *Post hearing note: Please see the Applicant's response to Action 3 below.* In response to the ExA's question regarding whether hedges H275, H278 and H280 were still required or could be taken out, Ms Brodrick replied that the Applicant will need to consider the point further and confirm the position in writing. *Post hearing note: Please see the Applicant's response to Action 4 below.* *Schedule 9 – deemed marine licence* In response to the ExA's question on the deemed marine licence, Ms Brodrick responded that it is still the Applicant's position that a deemed marine licence is required. Mr Phillips explained the position that had been reached with the MMO in the Gate Burton Energy Park examination. The MMO have conceded that, whilst exemptions do apply at present, they could be removed in the future. The ExA for that project has asked why, given the risk of the exemption falling away, the provisions should not be included in the Order. Mr Phillips confirmed that the MMO were engaging with that applicant, but that they were waiting for a without prejudice marked up version of that schedule from the MMO for the Gate Burton Energy Park draft DCO. He later confirmed that the MMO had requested a word version of the deemed marine licence, so that applicant was hopeful to receive comments from the MMO soon. *Further questions on hedgerow powers* In response to questions from the ExA relating to the drafting of Schedule 13 and the control mechanism to prevent hedgerows not shown on the indicative hedgerow removal plans being removed, Ms Brodrick confirmed that the detail of all hedgerows to be removed would need to be set out in the LEMP, confirming that this was the control mechanism. In order to obtain the approval for the LEMP, the Applicant would have needed to provide the detail to the discharging authority. They must be confident in approving the plan that there are no new or materially different environmental effects as a result of any changes to the parameters that were assessed in the ES. She added that a removal of up to 7.1m had been assessed, so if (for example) the highways authority needed a 7.5m access for visibility splay in a particular location, the discharging authority would need to be satisfied this would not result in any no new or materially different environmental effects compared to the effects in the ES.

#	ExA Question / Item for discussion	Applicant's response
		In response to an ExA question on how the deemed approval process would apply to the discharge of the O-LEMP, Ms Brodrick referred to Schedule 17. She noted that the discharge of requirements process for the Scheme and others relies on the involvement of the discharging authority, but that a significant amount of time, indeed more than on other projects (10 weeks), had been built into Schedule 17 to deal with the approval process. She also noted the provisions for payment to the discharging authorities for carrying out their obligations and for copies of the documents to be provided to all consultation bodies, which are mechanisms to assist the local planning authorities. Paragraph 2(5) of Schedule 17 requires the undertaker to include a statement confirming whether it is likely that the application for discharge will give rise to any new or materially different environmental effects. In response to WLDC querying the "substantially in accordance" wording included in the requirements, Ms Brodrick explained the purpose and intent of this wording, and described how a reference to being "substantially in accordance with" means that the Applicant cannot submit a final document with lesser obligations in it. However, a greater degree of detail will be included in the final plans. She also referred to Requirement 3, which sets out the process for amendments to approved documents, stating that if the Applicant wanted to make any amendments to any approved documents, it would need to demonstrate that it is unlikely to give rise to any materially new or materially different environmental effects.
Agenda Item 5 – Opportunity for Interested Parties to comment on other aspects of the dDCO and raise any matters not covered in items 1-4 above.		
5		Ms Hall on behalf of LCC : - Article 9 (power to alter layout etc. of streets): Ms Hall noted the procedure for streets specified in Schedule 5 is clear, however that for streets not listed in Schedule 5, she asserted that LCC is keen to ensure the process under section 278 is not circumvented. She noted the amended wording in article 9(4) is accepted. The concern relates to the imposition of deemed approval provisions for streets listed in Schedule 5, given the application of Schedule 17, noting the potential safety implications. - Article 15 (traffic regulations measures): Ms Hall noted LCC's concerns about the notification procedures in article 15(1), and requested that notice be amended to the consent of LCC. She also raised concerns about potential clutter of road signs if more than once local scheme is to be constructed at the same time. - Requirement 12 (archaeology): Ms Hall noted the disagreement about the appropriateness of the SoS being the discharging authority for the WSI, given the content of the WSI is contested between the parties. She noted that detailed submissions would be made on the points of disagreement between LCC and the Applicant. - Schedule 17, paragraph 5 (procedure for discharge of requirements): Ms Hall noted there is a read across to the Town and Country Planning (Fees for Applications, Deemed Applications, Requires and Site Visits) (England) Regulations 2012, noting it had recently increased. She queried the "read across" from TCPA to DCO, and noted that the sums involved seemed too small given how resource intensive discharging requirements can be. WLDC agreed with this position. Mr Sheikh on behalf of WLDC asked how the fees would work if multiple requirements were being discharged. Ms Brodrick responded to a number of comments made on behalf of LCC and WLDC:

#	ExA Question / Item for discussion	Applicant's response
		- In respect of Article 9, she noted the provisions (including in relation to deemed approval in Schedule 17) are standard DCO drafting. The final CTMP will include the level of detail usually required for a section 278 agreement. If the information was considered to be substandard, it would be for LCC to refuse to approve the CTMP or request further information. The deemed approval provision is to ensure there is no delay to the implementation of a NSIP. She confirmed that clarity would be included in the O-CTMP to confirm the level of detail that would need to be submitted. - In respect of Article 15, Ms Brodrick explained that the Applicant did not consider any amendment to article 15(1) to be necessary, noting that this only related to the placing of traffic regulation signs, meaning the Applicant considered it appropriate for there to only be a notification requirement. She noted there has been no request from LCC to include additional wording in the O-CTMP, the Applicant is happy to consider any additional wording that the highways authority would like in relation to specific signs and signals. There is no intention, through this power, to circumvent any controls, the Applicant is merely seeking to avoid the need for an additional statutory consent when this is already dealt with in the DCO. - In respect of requirement 12, in light of the lack of alignment between LCC and the Applicant, it is considered appropriate for the SoS determine whether the WSI is satisfactory. This is because it is considered to be an impediment to delivery of the Scheme if LCC were to be the approving authority. As is common on other DCOs, both parties should submit their preferred versions of the WSI, with the SoS to decide which is appropriate. She noted that the Applicant had not received comments from LCC on the WSI in light of the in-principle objection. The Applicant notes that LCC agreed to consider the WSI and provide comments on a without prejudice basis. - In respect of Schedule 17, paragraph 5, she invited LCC and WLDC to submit alternative drafting into the Examination that would address their concerns relating to fees. She noted that each application to discharge a requirement would attract a separate fee, even if an application for the discharge of several requirements was submitted at the same time. *Post hearing note: An updated Outline Construction Traffic Management Plan [EN010133/EX3/C6.3.14.2_C] has been submitted at Deadline 3.*
Agenda Item 6 – Other matters		
6		In response to a query from Mr Prior relating to the Glint and Glare assessment in ES, Ms Brodrick noted the point, but responded that it was not appropriate to discuss it in the hearing, as it related to the EIA rather than the DCO. The ExA raised a question relating to the definition of generating station in the draft DCO. He referred to section 64(1) of the Electricity Act 1989 which defines generating station "*in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station*" and asked whether a specific definition needed to be included in the dDCO. *Post hearing note: Please see the Applicant's response to Action 5 below.* In response to comments made by Mr Mugglestone on behalf of Blyton Park Driving Centre (BPDC), Ms Brodrick responded that the Applicant was working to design a solution and the intention was for the Scheme and the ongoing operation of the driving centre to coexist.

#	ExA Question / Item for discussion	Applicant's response
Agenda Item 7 - Close		
7		No further submissions were made.

List of actions for the Applicant following Issue Specific Hearing 5 (8 December 2023)

#	Action	Applicant's response
1	Applicant to consider whether specific percentages for BNG should be included in Requirement 9 of the dDCO.	The Applicant notes that the correction to the Longfield Solar Farm Order 2023 means that another metric can be used if approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. However, the Applicant maintains its position that it is appropriate at this stage to commit to the delivery of the mitigation and for the final BNG Strategy to set out the metric used and percentages at the detailed design stage. The Applicant has reviewed the other DCOs made since Longfield Solar Farm Order 2023. Only two of the six DCOs contain a specific BNG requirement. They are: Requirement 6 of the Hornsea Four Offshore Wind Farm Order 2023: *6.—(1) No stage of the connection works in Work No. 7 may commence until a net gain strategy (which must accord with the outline net gain strategy) in relation to that stage has been submitted to and approved by the relevant planning authority, in consultation with the relevant SNCBs.* *(2) The net gain strategy must be implemented as approved.* The Applicant notes that the outline net gain strategy did not include a commitment to deliver a specific percentage of BNG. Requirement 6 of the Boston Alternative Energy Facility Order 2023: *"biodiversity units" means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off–setting metric);* *"biodiversity off-setting scheme" means a scheme which will deliver biodiversity enhancements which must not be less than the off–setting value;* *"Defra" means the Department for Environment, Food and Rural Affairs;* *"Defra biodiversity off–setting metric" means the mechanism published by Defra to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;* *"off-setting value" means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off–setting metric, measured in biodiversity units;* *6(4) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must include details of –* *… (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off–setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring;* *(d) the site or sites on which the compensation off–setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;*

#	Action	Applicant's response
		(e) certified copies of the completed legal agreements securing the site or sites identified in (d) to enable enactment of the biodiversity off-setting scheme and the biodiversity off–setting management and monitoring plan as approved in the landscape and ecological mitigation strategy;… The Applicant notes that there was no commitment to deliver a specific percentage of BNG. As the approach to BNG continues to evolve, the Applicant will keep Requirement 9 in the draft DCO under review.
2	Applicant to confirm in writing the approach that has been taken in calculating the percentage of panels to be replaced during a 60 year operational period.	The 0.4% per annum panel failure rate used in the assessment of climate change and waste environmental effects has been provided as part of a model of anticipated materials use, and waste stream arisings, from the development. This model was provided by an accredited Engineering Procurement Construction (EPC) contractor, and as such this model has been developed to industry standards.
3	Applicant to explain why hedgerows H154 and H155 have been included in Schedule 13.	H154 is located on the north side of Willingham Road. H155 is located along the east side of the access track to North Farm. Both are designated as important hedgerows. The arrangements for the access at the junction with Willingham Road will be subject to detailed design following the granting of the DCO. The Applicant's initial assessment has indicated that the removal of small amount of hedgerow might be required to allow for tracking of vehicles. Any removal would be in accordance with the parameters set out in C7.3_D Outline Landscape and Ecological Management Plan Revision C [EX3/C7.3_D].
4	Applicant to consider if hedgerows H275, H278 and H280 can be removed from Schedule 13.	H275 is located on Thorpe Lane. Whilst the Applicant does not anticipate at this stage that there will be a need to remove any of this hedgerow, some minor removal or pruning works may be required to allow for the safe movement construction vehicles or in order to comply with any measures relating to visibility required by the highway authority as part of the final Construction Traffic Management Plan approved pursuant to Requirement 15 of the draft DCO. Any removal would be in accordance with the parameters set out in C7.3_D Outline Landscape and Ecological Management Plan Revision C [EX3/C7.3_D]. H278, H279 and H280 are located around the boundary of the solar arrays proposed for Cottam 1. Whilst the Applicant does not anticipate at this stage that there will be a need to remove any of these hedgerows, it may be necessary to carry out some minor removal as part of the hedgerow enhancement works (for example, removing any damaged sections). Any removal would be in accordance with the parameters set out in C7.3_D Outline Landscape and Ecological Management Plan Revision C [EX3/C7.3_D].
5	Applicant to review the definition of generating station within section 64(1) of the Electricity Act 1989 (the 1989 Act), noting that this definition refers only to water-based generating stations	The 1989 Act definition is incorporated into the draft DCO as a term defined (by reference to the 1989 Act) in the Planning Act 2008, the 'parent' legislation under which the DCO will be made. The definition of "*generating station*" has been considered by the Courts in two relevant cases: *R. (on the application of Redcar and Cleveland BC) v Secretary of State for Business Enterprise and Regulatory Reform [2008] EWHC 1847 (Admin) ("Redcar"); and Durham CC v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 1394 (Admin) ("Durham").* The Redcar case considered whether an offshore wind farm was a generating station for the purpose of section 36 of that Act (consent for the construction etc. of generating stations). The judgment confirms that section 56(1) of the 1989 Act contains a '*non-exhaustive definition of "generating station*'". A clear distinction was found between the "*generation of electricity (in a generating station) and its transmission (by high voltage lines and electrical plan) and eventual distribution (by low voltage lines and plant) to domestic, commercial and industrial premises*". The fact that the application for the wind farm included both the offshore wind farm elements of the project, and the onshore transmission elements, did not mean that the wind farm could not properly be described as a generating station.

#	Action	Applicant's response
		The Redcar case concludes that "*as a matter of ordinary language, and on any reasonable interpretation of the provisions of the 1989 Act as amended by the [Energy Act 2004], the "generating station" is the place, in the present case the wind farm offshore, where the electricity is generated*" (Redcar judgment paragraph 27). The Durham case specifically considers the definition of "*generating station*" within the Planning Act 2008, in relation to solar farms. This judgment found that "*generating station*" is not defined "*save where it is "wholly or mainly driven by water"*", where the structures for holding or channelling water will form part of the generating station. This special definition for water-based generating stations suggests that, without that definition, the structures for holding or channelling water would not fall within the ordinary meaning of a "*generating station*". Were an analogy to be drawn to solar (which the judgment suggests is not a suitable approach, given the plain English meaning of '*generating station*'), the 'structures' would represent the physical means by which the raw materials are channelled so as to create electricity, that is the solar PV panels. The Durham case also confirmed the distinction between the generating station itself, and the transmission infrastructure used to distribute the energy generated at the generating station. Accordingly, the solar arrays fall within the definition of "*generating station*" within the plain English meaning confirmed by the Redcar case. Even on a more prescriptive interpretation by analogy to the non-exhaustive example in section 56(1) of the 1989 Act, the solar arrays constitute a generating station for the reasons set out in the Durham case. The Applicant considers that there is no basis to include a definition of "*generating station*" within the draft DCO as the Applicant does not seek to distinguish the authorised development from the definition given in the 1989 Act. It would, instead, reduce the level of clarity as to what is within the definition of "*generating station*" as the definition would no longer benefit from the caselaw associated with the 1989 Act definition, both currently and in the future. Accordingly, the Applicant does not consider it necessary to include a definition of "*generating station*" within the draft DCO.