



Stonestreet Green Solar

Written Summary of Oral Submissions from Issue Specific Hearing 1 and Responses to Action Points

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1 Written summary of the Applicant's Oral Submissions at Issue Specific Hearing 1

1.1 Introduction

- 1.1.1 This section of the document summarises the oral submissions put by EPL 001 Limited ('**EPL**' or the '**Applicant**') at Issue Specific Hearing 1 ('**ISH1**') which took place in a blended format at the Ashford International Hotel and on Microsoft Teams on 20 November 2024.
- 1.1.2 In what follows, the Applicant's submissions on the points raised broadly follow the Agenda for the ISH1 set out in the Examining Authority's ('**ExA**') letter which was published on the Planning Inspectorate's website on 22 October 2024 (the Rule 6 letter) [[PD-004](#)]. Where the comment is a post-hearing note submitted by the Applicant, this is indicated.
- 1.1.3 The Applicant, which is promoting the Stonestreet Green Solar project (the '**Project**'), was represented by Mr Hugh Flanagan of Francis Taylor Building, instructed by Herbert Smith Freehills LLP. He also introduced Mr Matthew Sharpe (Senior Director, Quod Planning Consultancy) and Ms Elin Fradgley (Director, Quod Planning Consultancy).

1.2 Agenda Item 1: Welcome and Introductions

- 1.2.1 The ExA welcomed attendees to ISH1 and provided introductory remarks about how the hearing would be conducted. The ExA confirmed that action points would be circulated shortly after the close of the hearing.

1.3 Agenda Item 2: Purpose of the Issue Specific Hearing

- 1.3.1 The ExA explained that the purpose of this ISH1 is to inquire into the draft Development Consent Order ('**Draft DCO**' or '**dDCO**') (**Doc Ref. 3.1(B)**), providing the Applicant with an initial opportunity to explain the structure, content and drafting approach (Agenda Item 3) and for the ExA to explore initial questions about the drafting approach taken with the Applicant and with bodies who are proposed or who might hold powers or duties under the dDCO (Agenda Item 4).

1.4 Agenda Item 3: Project Definition and limitations

- 1.4.1 The ExA asked the Applicant to set out its overall approach to the environmental assessment of the Project in light of the, so-called, Rochdale Envelope. The ExA noted he particularly wanted to ensure that the worst-case scenarios have been assessed.

- 1.4.2 Mr Flanagan on behalf of the Applicant responded to explain that it is correct, as is usual for projects like this, that a Rochdale Envelope has been used, as described in the Planning Inspectorate's *Advice Note 9: Rochdale Envelope*, to assess the environmental effects of the Project within certain parameters. He added that, from a legal perspective, the Rochdale Envelope for this Application comprises three aspects:
- The authorised development, as set out in Schedule 1 of the **Draft DCO (Doc Ref. 3.1(B))**;
 - The **Works Plans (Doc Ref. 2.3(B))**; and
 - The **Design Principles (Doc Ref. 7.5(A))**.
- 1.4.3 Mr Flanagan explained that these three documents set out the legal outline of the Rochdale Envelope. From a policy perspective, this approach is adopted because of the need for flexibility, which is recognised in section 4.3 of the Overarching National Policy Statement for Energy (January 2024) ('**NPS EN-1**'). In respect of solar DCOs, there is particular recognition of the need for flexibility in sections 2.6 and 2.10 of the National Policy Statement for Renewable Energy Infrastructure (January 2024) ('**NPS EN-3**'). He noted that one of the critical phrases in national policy in this respect is that "*in many cases, not all aspects of the proposal may have been settled in precise detail at the point of application*" (paragraph 2.10.70 of NPS EN-1). He confirmed that that is why an outline approach is adopted, to be filled in with detail at a later stage.
- 1.4.4 He explained that this is regarded as a proportionate approach. The **Draft DCO (Doc Ref. 3.1(B))** provides a framework, enabling the detailed design to take place after the grant of the DCO, allowing matters to move forward expeditiously. The detailed design is subject to approval of the local planning authority, as set out in Requirement 4 of the dDCO. The need for flexibility arises because of the need to accommodate and respond to any findings from detailed work, e.g. ground conditions and completion of intrusive survey works pursuant to **Archaeological Management Strategy ('AMS') (Doc Ref. 7.17)** [[APP-162](#)]. The dDCO allows those findings to be accommodated in the detailed design. The need for flexibility is particularly important to solar projects given that solar technology is rapidly evolving. Flexibility allows projects to use the best available technology at the time of delivery, enabling the maximisation of the benefits in generating renewable energy.
- 1.4.5 For example, the number of panels in each string of PV panels is dependent on electrical design. Power output increases as the technology improves, and flexibility allows further improvements to be incorporated into the detailed design. The same applies to battery energy storage systems ('**BESS**').
- 1.4.6 The Environmental Statement ('**ES**') has assessed the authorised development within the Rochdale Envelope. Development within the Rochdale Envelope will not create new or different likely significant effects compared to what has been assessed.
- 1.4.7 Mr Flanagan then turned to the **Written submissions on Examination Procedure** [[PD1-004](#)] from Aldington and Bonnington Parish Council received by the ExA at

Procedural Deadline A and titled "Counsel's Note" (the '**Note**'). He noted that the submission raises some detailed legal drafting points, but that some of the points raised relate to the Rochdale Envelope and broader points of principle. He confirmed that the Applicant would respond in full in writing, but summarised that the headline points are:

Description of Project generating capacity

- The Note suggests that the Application has not provided a range of generating capacity outputs.¹ Mr Flanagan confirmed that this was not correct. The **Grid Connection Statement (Doc Ref. 7.3) [APP-148]** explains that the agreed grid connection for the Project will allow the export and import of up to 99.9 megawatts ('MW') of electricity to the grid. Mr Flanagan stated that the Note refers to "output capacity", which is different to the agreed grid connection export capacity. He noted that information on this is set out in some detail in the **Environmental Statement Volume 2, Chapter 15: Climate Change (Doc Ref. 5.2) [APP-039]** in the context of explaining the benefits of the Project to grid decarbonisation. Paragraph 15.6.13 states that *"The Project generating capacity, assuming 655W panels and the illustrative design is circa 144 MW... This analysis assumes 655W modules as a reasonable worst case assessment as these are readily available today; however, by the time of construction it is highly likely that higher wattage panels will be readily available which could increase the generating capacity from the illustrative design figure to circa 165 MW."*
- Mr Flanagan explained that this value is necessarily non-specific and it is a range, but that this answers the question in the Note. This exceeds the export capacity in the grid connection agreement, which is an approach that is entirely standard. He confirmed that in almost all cases the installed generating capacity of solar panels will be, and is, higher than the export capacity in the grid connection agreement. He added that if BESS is co-located with solar panels, typically the sizing is 1.4 to 1.8 times larger than the connection agreement, depending on site specific matters. Applying this to the Project results in a generating capacity of c.140-180MW, which is the range specified in the Application documents.
- Mr Flanagan then explained that this approach is taken because solar is an intermittent form of energy generation. Designing projects with a generating capacity that is higher than the grid connection value maximises the renewable energy that can be generated and ensures that the grid connection capacity is maximised. He noted that, as the ExA will be aware, connection capacity is in short supply and is a concern. As a result, the Applicant considers it vital that the Project maximises its grid capacity agreement.

Parameters

- Mr Flanagan explained that the Note queries whether sufficient development parameters are secured within the Application, and implies that the heights of panels and other components of the development are not

¹ See paragraph 9 of the Note.

secured.² He confirmed that this is not correct: these matters are set out in the **Design Principles (Doc Ref. 7.5(A))**, which establish the heights the various elements of the Project cannot exceed. In response to the comments in paragraph 15 of the Note, the **Design Principles (Doc Ref. 7.5(A))** set out that there will be up to 32 inverter stations and up to 4 BESS units per inverter station.

Associated Development

- Mr Flanagan noted that DCOs can provide for "associated development", as well as the principal development for which development consent is required, as set out in section 115(1) of the Planning Act 2008 and associated guidance.³ As to the query in the Note as to whether BESS qualifies as "associated development",⁴ Mr Flanagan confirmed that it is well established that BESS qualifies as associated development in solar schemes. A number of Secretary of State ('SoS') decision letters for solar DCOs make this clear, and the practice is established across the industry. He added that inclusion of a BESS allows a project to maximise how much energy it can export to the grid, in the context of solar providing intermittent energy generation. This approach maximises efficient use of the land and the efficient use of grid connection capacity.

Inclusion of BESS within Work No. 2

- Mr Flanagan noted that the Note queries whether the BESS should be its own identified Work Number in Schedule 1 to the **Draft DCO (Doc Ref 3.1(B))**, rather than having been *"rolled in" together with "balance of system" components which are ancillary to the solar panel array itself, such as inverter stations and local intermediate substations*⁵, thereby allowing the BESS to be assessed as an individual component of the Project. He confirmed that the Applicant considers there is no reason to take a different approach to the drafting of Work No. 2, and indeed good reasons to take this approach. He described the dispersed arrangement of inverters and BESS, noting that these elements are packaged together across the Site. As a result, having them grouped together in one Work Number was entirely rational and it could be confusing to use separate Work Numbers for the BESS and inverter station.

- 1.4.8 Mr Flanagan reiterated that the Note raises some other detailed drafting points that the Applicant would respond to in writing.
- 1.4.9 **Post-hearing note:** Please see the Applicant's response to Action Point 6 below.
- 1.4.10 The ExA noted the points that the Applicant had raised about emerging energy technologies. He asked the Applicant to confirm whether, if the capacity of panels is increasing, the Applicant will require the full amount of fields required for the

² See paragraphs 10-15 of the Note.

³ See "Planning Act 2008: Guidance on associated development applications for major infrastructure projects", Department for Communities and Local Government, April 2013.

⁴ See paragraphs 16 to 18 of the Note.

⁵ See paragraph 13 of the Note.

Project. He also noted the request from IPs that Fields 20, 21 and 22 be removed from the Project.

- 1.4.11 In response, Mr Sharpe on behalf of the Applicant explained that as efficiency of panels increases, it optimises the ability of the Project to meet the maximum grid connection capacity. He confirmed that this would not change the size of the area required for solar PV panels, it would instead make the Site more efficient and allow the Applicant to make more efficient use of the available grid capacity.
- 1.4.12 The ExA queried if the **Design Principles (Doc Ref. 7.5(A))** should be referenced in the dDCO requirements, especially in relation to the parameters set out in that document.
- 1.4.13 On behalf of the Applicant, Mr Flanagan responded that Requirements 4(2) and 4(3) in Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))** anticipate this point. They provide that written details submitted for approval pursuant to Requirement 4(1) (detailed design) must accord with the **Design Principles (Doc Ref. 7.5(A))** and must be carried out in accordance with these approved details, such that the Design Principles are secured through the dDCO.
- 1.4.14 Ashford Borough Councillor ('Cllr') Linda Harman (ward member for Saxon Shore and Chair of Aldington and Bonnington Parish Council ('ABPC')) asked:
- (1) If there are parameters set out in a document that is not the Draft DCO and the DCO is granted, are the details set out in that other document still legally binding?
 - (2) If technology improves, should it not mean that the Project is more efficient and therefore less land is required?
- 1.4.15 Mr Flanagan responded as follows:
- (1) The design parameters are secured and enforceable – the **Design Principles (Doc Ref. 7.5(A))** are incorporated into the **Draft DCO (Doc Ref. 3.1(B))** through Requirement 4 in Schedule 2 and the works are defined in Schedule 1 to the Draft DCO and shown on the **Works Plans (Doc Ref. 2.3(B))**. These documents establish the limits of what consent would be granted for.
 - (2) Mr Sharpe's earlier oral response relating to generating capacity and sizing dealt with this point (see paragraph 1.4.11). The Project has been sized based on current technology that presently exists but not having ignored possible technological improvements in the future. The sizing of the Project accords with other solar schemes and is supported by national policy. The grid connection will be optimised for more of the time if the technology improves. This is a positive benefit as it optimises use of connection capacity and renewable energy generation to the grid.
- 1.4.16 The ExA asked what the rate of optimisation for grid connection capacity was, and how often the Applicant expected that the Project would hit the target grid connection capacity.

1.4.17 Mr Flanagan confirmed that this point would be taken away and confirmed in writing.

1.4.18 **Post-hearing note:** *An oral response on this matter was provided by the Applicant during Issue Specific Hearing 2. Please see section 1.3 of the Applicant's Written Summary of Oral Submissions at Issue Specific Hearing 2 and written submissions in response to Action Points (Doc Ref. 8.5.5).*

1.5 Agenda Item 4: The Overall Structure of the dDCO

1.5.1 The ExA asked the Applicant to explain its overall approach to the drafting of the dDCO and clarify what matters are to be secured by alternative methods, such as Planning Obligations and other forms of agreement.

1.5.2 In response, Mr Flanagan on behalf of the Applicant provided a general overview. He explained that the key documents are the **Draft DCO (Doc Ref. 3.1(B))** and the **Explanatory Memorandum (Doc Ref. 3.3(B))**, the latter of which provides detail on the dDCO.

1.5.3 He then described the key parts of the **Draft DCO (Doc Ref. 3.1(B))** as follows:

- Part 2 (Principal Powers): Article 3 grants development consent for the authorised development to be carried out within the Order Limits subject to provisions of the Order, including the requirements. He noted that Article 3 is part of a suite of articles which form the principal powers, the other key articles being Article 4 (maintenance of the authorised development) and Article 5 (authorisation to operate and use the authorised development).
- Article 6 provides that the benefit of the Order is solely for the Applicant, save for certain exceptions. Article 7 contains standard drafting relating to consent to transfer the benefit of the Order, subject to express controls, such as requiring the consent of the SoS save in certain circumstances (e.g. where no compensation claims are outstanding).
- Mr Flanagan explained that these principal powers must be read in accordance with Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))**. Schedule 1 describes the authorised development by reference to specific numbered works. Work Nos. 1-8 relate to specific elements of the Project, and Work No. 9 is for "Site Wide Works", covering the whole of the Order Limits. He explained that Work No. 1 is the generating station itself, being the solar PV panels and mounting structures. Work No. 2 is the balancing system and BESS.
- He also referenced Work No. 4 and limb (d) within this, which provides for "*Works to lay high voltage electrical cables and to extend Sellindge Substation to facilitate grid connection including...crossing of Network Rail infrastructure either (i) using existing electrical ducts; or (ii) through the installation of new cable ducts*". This enables an element of optionality relating to ducting for the cable route under the railway. He explained that the reason for this is that UK Power Networks ('UKPN') needs to confirm whether the existing ducts under the railway are structurally sound and can be used. The Applicant has no reason to think they will not be capable of

being used, as set out in **Grid Connection Statement (Doc Ref. 7.3)** [[APP-148](#)]. However, if they cannot be used Work No. 4(d)(ii) will need to be exercised. Mr Flanagan confirmed that it is understood that UKPN is doing investigation work this week to provide confirmation of whether they can be used.

1.5.4 **Post-hearing note:** *Please see the Applicant's response to Action Point 1 below.*

1.5.5 Mr Flanagan on behalf of the Applicant continued to explain the structure of the **Draft DCO (Doc Ref. 3.1(B))**, as follows:

- The later parts of the dDCO deal with the following: Part 3 (streets), Part 4 (public rights of way), Part 5 (supplemental powers), Part 6 (powers of acquisition and possession of land) and Part 7 (miscellaneous and general).
- Schedule 2 provides controls via requirements, which are akin to planning conditions in a non-DCO context. He noted that the requirements deal with a number of different matters:
- Requirement 2 secures that the DCO grants a time limited consent. This is relevant to the agricultural land assessment: the Project will not result in a permanent loss of all such land within the Order Limits, as the use will be temporary.
- Requirement 4 requires detailed design approval from the local planning authority in respect of the listed matters in Requirement 4(1). In this respect, the DCO is a framework consent, which leaves the detail to be approved by the local planning authority in due course.
- Requirement 5 onwards sets out provisions dealing with the approval and implementation of a number of management plans. Many of the requirements require these plans to be in accordance with outline plans submitted as part of the Application, and approved by the local planning authority in consultation with other relevant parties. These requirements are relevant to the principal issues identified by the ExA in the Rule 6 letter [[PD-004](#)].

1.5.6 Mr Flanagan stated that he would not go through the other schedules to the **Draft DCO (Doc Ref. 3.1(B))** unless there were specific questions, but he noted that they are schedules that are commonly seen in DCOs.

1.5.7 He then confirmed that there are intended to be no additional Planning Obligations or other forms of agreement, as these are not considered by the Applicant to be required in this case. He noted that the Planning Act 2008 regime allows the DCO itself to wrap up certain other consents required to deliver the Project. The **Schedule of Other Consents and Licences (Doc Ref. 3.4)** [[APP-018](#)] sets out what the **Draft DCO (Doc Ref. 3.1(B))** does and does not provide consent for, and explains that the Applicant considers that there is no reason to believe that these other consents (such as, for example, a flood risk activity permit from the Environment Agency) will not be granted, so as to cause an impediment to the Project.

- 1.5.8 In relation to UKPN's investigations of the ducting under the railway, the ExA asked if the Applicant was likely to have confirmation of the outcome by Deadline 1 or Deadline 2.
- 1.5.9 Mr Flanagan responded to confirm that an update would be provided at Deadline 1.
- 1.5.10 **Post-hearing note:** *Please see the Applicant's response to Action Point 1 below.*
- 1.5.11 Mr Mills, on behalf of Ashford Borough Council ('ABC'), raised the following points and confirmed these would also be provided in writing:
- Requirement 3(1) refers to ABC agreeing a written phasing scheme prior to commencement of the Project. Mr Mills noted that ABC considers this particularly important in order to provide clarity to the community. It would assist clarity if the phasing could include information about sequencing of phases, as this will provide information about the Project. He suggested a Gantt chart would be the most effective way to present this.
 - Requirement 5 (battery safety management plan). Mr Mills noted that ABC has some experience of BESS through other local schemes. To ensure there is no pollution from water run-off in the event of an incident, the Environment Agency, Kent County Council ('KCC') and River Stour (Kent) Internal Drainage Board ('IDB') should be included as consultees in Requirement 5(1). He noted that the **Draft DCO (Doc Ref. 3.1(B))** does allow ABC to widen consultation, but putting it on the face of the Order will provide the community with clarity.
 - Mr Mills also requested that KCC be added as a consultee party for Requirements 6 (construction environmental management plan); 7 (construction traffic management plan); 8 (landscape and biodiversity) and 10 (public rights of way).
 - In respect of Requirement 11 (operational surface water drainage strategy), Mr Mills noted that ABC's view is that the wording as proposed (which requires a final operational surface water drainage strategy to be approved prior to operation of the Project) is inadequate. Instead, this should be approved at the same time as the phasing and detailed design submissions are approved, to ensure coherent and holistic design relating to drainage strategy. He also asked that consultation be widened to include the IDB and KCC.
 - Requirement 13 (operational noise mitigation and monitoring scheme): Mr Mills noted ABC's concern that Requirement 13(1) does not contain the best trigger point. Instead, the noise mitigation and monitoring scheme should be submitted for approval prior to commencement of any phases defined in the Draft DCO (Doc Ref. 3.1(B)), not the operation of Work Nos. 2 and 3.
 - Requirement 14 (decommissioning and site restoration): Mr Mills requested that consultation on the final decommissioning environmental management plan(s) and decommissioning traffic management plan(s) be widened to include KCC and the Environment Agency.
 - Mr Mills noted that Requirement 16(2) (amendments to approved details)

contains the phrase "demonstrated to the satisfaction of the local planning authority", which he described as "nebulous".

- Finally, he noted that the timescales set out in Part 2 of Schedule 2 were potentially too tight in his view. He particularly noted the 7 and 14 day timescales in paragraphs 18(2) and 18(3). He noted that ABC want to work with the Applicant but are concerned that the timescales will be difficult to achieve.

1.5.12 The ExA noted that a Gantt chart showing the sequencing of the phases of Project construction could be useful, as requested by ABC.

1.5.13 In response, Mr Flanagan on behalf of the Applicant set out the following points:

- The Applicant was grateful for the acknowledgment that ABC will work with the Applicant if the DCO is granted.
- In respect of Requirement 3, what Mr Mills is requesting in terms of sequencing is the intention of that requirement. ABC have control given that the Requirement requires the phasing scheme to be approved by ABC.
- ***Post-hearing note: Please see the Applicant's response to Action Point 2 below.***
- In respect of ABC's comments regarding widening consultation on the discharge of various requirements, Mr Flanagan noted that it is important to bear in mind the context of the recognised urgent need for this type of development to come forward. Delay undermines that objective, and therefore additional consultation requirements need to be properly justified. He noted that the current approach taken in most requirements is that the discharging authority is ABC, with KCC as a consultee. There may be a need for other parties to be consulted, but the Applicant does not consider it necessary to expressly require this at this stage. For example, he noted that Requirement 7 (construction traffic management plan) is drafted such that discharge is to be in consultation with KCC and National Highway as relevant highway authorities; the Applicant does not consider that any other parties should be a consultee on the face of the Order.
- In relation to Requirement 16(2), which states that *"Approval under subparagraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the local planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement"*, Mr Flanagan noted that it is recognised that requirements and conditions should not be open ended and so-called 'tailpieces' can sometimes cause issues in that respect. He confirmed that this is not the case here: the text is doing the opposite, by providing the control that amendments cannot give rise to materially new or materially different environmental effects from those assessed in the Environmental Statement, and so cannot go outside the Rochdale Envelope. As such, the mischief highlighted by ABC is addressed by the text.

- 1.5.14 In respect of Requirement 11 (operational surface water drainage strategy), Mr Sharpe on behalf of the Applicant noted that as part of the Statement of Common Ground between the Applicant and KCC, the Applicant has agreed to revise the wording to bring forward the approval point. He noted that this agreement was a consequence of the advanced discussions with KCC on the Statement of Common Ground ('SoCG').
- 1.5.15 Mr Sharpe also noted that the Applicant shared two separate versions of the requirements with KCC and ABC during the pre-application period, and confirmed that the Applicant would be happy to hear further comments and reach an agreed position on the drafting in the next iteration of the **Draft DCO (Doc Ref. 3.1(B))**.
- 1.5.16 **Post-hearing note:** *Please see the Applicant's response to Action Point 3 below.*
- 1.5.17 Ms Potter on behalf of KCC noted that KCC supported being a technical consultee, and confirmed they will work with ABC and the Applicant as required. She confirmed that further comments on the detail of the dDCO will be provided in writing.
- 1.5.18 Mr Tennant on behalf of Aldington and Mersham Support Group ('AMSG') noted that the breadth of the definition of "maintain" in Article 2 of the Draft DCO (Doc Ref. 3.1(B)) is concerning, particularly the use of word "reconstruct", especially in light of potential technological advances. He asked what mechanism there was to deal with full reconstruction.
- 1.5.19 In response, Mr Flanagan on behalf of the Applicant noted that the definition of "maintain" in Article 2 of the **Draft DCO (Doc Ref. 3.1(B))** contains the wording *"provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement"*. He confirmed that this approach is not novel and is well precedented in made DCOs. He explained that the drafting is intended to cover the sort of maintenance activities needed to keep the Project operating and in good condition. It is not intended to enable the Applicant to build a completely new project: it relates to maintenance in relation to the authorised development only. It is therefore not an open ended power and is not outside the scope of what has been assessed in the Environmental Statement.
- 1.5.20 **Post-hearing note:** *Please see the Applicant's response to Action Point 4 below.*
- 1.5.21 The ExA asked the Applicant to confirm whether, if consent is granted, outreach could be provided to the community to inform them in advance of any maintenance works.
- 1.5.22 In response, Mr Flanagan on behalf of the Applicant confirmed this would be taken away and considered, noting that this could be included in a management plan.
- 1.5.23 **Post-hearing note:** *Please see the Applicant's response to Action Point 5 below.*
- 1.5.24 Cllr Harman requested reassurance from the Applicant that commitments to engage the community are verified. She noted concerns about maintenance vehicles

causing adverse effects, and referred to case studies of instances where engagement has been effective between developers and the community and has improved perceptions of projects.

- 1.5.25 In response, the ExA referred Cllr Harman to the Applicant's commitment to provide further information relating to maintenance works.
- 1.5.26 Mr Flanagan on behalf of the Applicant noted that Requirement 12 in Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))** provides that an operational management plan must be implemented as approved and be in accordance with the **Outline Operational Management Plan ('OMP') (Doc Ref. 7.11(A))**. He confirmed that this plan expressly deals with operation and maintenance. He confirmed that the Applicant would take this away and provide more detail in due course.
- 1.5.27 *Post-hearing note: Please see the Applicant's response to Further Action Point 1 below.*
- 1.5.28 Cllr Harman than noted that the OMP will be approved by ABC, which is not the community and is not the Parish Council. She noted an example of a National Grid scheme which involved agreement between the local planning authority and the applicant to ensure the Parish Council had a say in the management plan.
- 1.5.29 In response, Mr Flanagan on behalf of the Applicant explained that the plan has to be approved by ABC, on the basis that they are the relevant authority with professional officers that deal with the type of matters that would be submitted for approval. It is appropriate and proportionate that ABC are the approving body. He noted that the Applicant does not consider it necessary or appropriate to extend this approval process any further, noting that the ABPC has a clear opportunity now to comment on the **Outline Operational Management Plan ('OMP') (Doc Ref. 7.11(A))**. He confirmed the Applicant will have regard to these comments.
- 1.5.30 Ms Eardley on behalf of ABPC noted that they were still unhappy with the Applicant's answer relating to the output capacity of the Project. She noted that Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))** sets out a lower limit of 50MW, which is then explained in the **Explanatory Memorandum (Doc Ref. 3.3(B))**, but noted that there is information in the **Design Principles (Doc Ref. 7.5(A))** that indicates what an upper limit could be. She noted the point that national policy does direct applicants to optimise efficiency, but noted that this should not be at the expense of all other effects on the landscape. She noted that just because the land is available, it does not mean that it should be used.
- 1.5.31 Mr Thompson on behalf of CPRE Kent agreed with ABC regarding the 14-day timescale in Requirement 18(2) in Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))** being too short.
- 1.5.32 Mr Mills on behalf of ABC requested clarity from the Applicant on the statement that there would not be any form of Planning Obligation. He noted that paragraph 3.1.3 of the **Outline Rights of Way and Access Strategy ('RoWAS') (Doc Ref. 7.15(A))** refers to how off-site public rights of way ('PRoW') will be secured. He confirmed

that it was ABC's working assumption that there is scope for a section 106 agreement to identify what upgrades are needed and where.

- 1.5.33 In response, Mr Flanagan on behalf of the Applicant noted that paragraph 3.1.3 of the **Outline Rights of Way and Access Strategy ('RoWAS') (Doc Ref. 7.15(A))** starts with the text "*Subject to third party landowner agreement and appropriate permissions for areas, a shared walking / cycleway will be provided...*" It is not being put forward by the Applicant as something that is secured through the DCO. He explained that these PRow upgrades could not be the subject of a section 106 agreement, because they are subject to third party landowner agreements. Finally, he noted that given these upgrades are potentially achievable, it is proper that they are mentioned in the Application, but they are put forward on a caveated basis.

1.6 Agenda Item 5: ExA's Questions on the DCO

- 1.6.1 The ExA explained that under this agenda item he would ask the Applicant questions about the **Draft DCO (Doc Ref. 3.1(B))** and invited other IPs to participate. He noted they will not be expected to frame their own detailed positions until the submission of their Written Representations, Local Impact Reports and participation in a potential DCO issue specific hearing later in the Examination.
- 1.6.2 The ExA asked that the extent of any flexibility provided by the **Draft DCO (Doc Ref. 3.1(B))** should be explained, such as in the definition of "maintain" in Article 2. He noted that the preferred approach to limit again this flexibility is to limit the works or amendments to those that would not give rise to any materially new or materially different environmental effects. In relation to the use of tailpieces, the ExA referred the Applicant to section 5.3.17 of *Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders*. He noted that the alternative should provide clearly for unforeseen circumstances and define the scope of what has been authorised with sufficient precision. For example, the Secretary of State had to amend Article 6 (benefit of order) of the National Grid Richborough Connection Project Order 2017 to remove ambiguity. He added that the need for flexibility to carry out advanced works and carve matters out from the definition of "commencement" should be fully justified.
- 1.6.3 In response, Mr Flanagan on behalf of the Applicant explained that the **Draft DCO (Doc Ref. 3.1(B))** does incorporate flexibility in the usual way, noting that the Applicant has provided evidence of this. He confirmed that the Applicant will provide a fuller response in writing dealing with flexibility.
- 1.6.4 Regarding the definition of "commence", he noted that this point was raised in the Note [[PD1-004](#)]. He explained that the definition of "commence" in Article 2 includes any material operation other than "site enabling works". He noted that this is a legitimate and approved carve out in many made DCOs, adding that the definition of "site enabling works" is standard and includes as a carve out the usual works included in this definition.
- 1.6.5 In response to the ExA referring to limits of deviation, Mr Flanagan confirmed that the **Draft DCO (Doc Ref. 3.1(B))** does not include express 'limits of deviation'

wording that is seen in some DCOs, but explained that such limits are in effect secured through the **Works Plans (Doc Ref. 2.3(B))** and the **Design Principles (Doc Ref. 7.5(A))**, which is a recognised approach.

- 1.6.6 **Post-hearing note:** *Please see the Applicant's response to Further Action Point 2 below.*
- 1.6.7 The ExA asked that the **Explanatory Memorandum (Doc Ref. 3.3(B))** provide explanation for the following definitions that are different to those in section 235 of the Planning Act 2008: "public right of way", "easement", "private road" and "statutory nuisance". He also asked that the definition of "business day" in Article 2 be amended to include a reference to public holidays.
- 1.6.8 **Post-hearing note:** *Please see the Applicant's response to Action Point 7 below.*
- 1.6.9 The ExA asked whether the definition of "local planning authority" in Article 2 of the **Draft DCO (Doc Ref. 3.1(B))** should include KCC.
- 1.6.10 Mr Flanagan on behalf of the Applicant responded to confirm that KCC is a consultee, rather than a discharging authority, and so the definition in Article 2 is correct.
- 1.6.11 In respect of Article 6 (benefit of the Order) and Article 7 (consent to transfer benefit of the Order), the ExA noted that the SoS will need to be satisfied that UKPN and National Grid have sufficient funding for compensation in respect of the use of any compulsory acquisition powers they can exercise under the **Draft DCO (Doc Ref. 3.1(B))**.
- 1.6.12 Mr Flanagan confirmed in response that UKPN is a statutory undertaker, and so can be relied on to have funding and perform its statutory functions.
- 1.6.13 **Post hearing note:** *An oral response on this matter was provided by the Applicant during Compulsory Acquisition Hearing 1. Please see section 1.5 of the Applicant's Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and written submissions in response to Action Points (Doc Ref. 8.5.4).*
- 1.6.14 In respect of Article 8 (disapplication, application and modification of legislative provisions) of the **Draft DCO (Doc Ref. 3.1(B))**, the ExA asked whether the disapplication of the Community Infrastructure Levy Regulations 2010 ('CIL') was necessary.
- 1.6.15 Mr Mills on behalf of ABC responded that ABC is not a CIL charging authority and has no plans to become one in the future.
- 1.6.16 Mr Flanagan on behalf of the Applicant then explained that although ABC is not a CIL charging authority at the moment, it could be in the future, and so the drafting is to provide for that eventuality. He noted that ABC's website states that the CIL programme is "currently on hold", which gives rise to the possibility that it could be taken 'off hold'.

- 1.6.17 The ExA noted that no precedent for the drafting of Article 8(5) is provided in paragraph 3.6.6 of the **Explanatory Memorandum (Doc Ref. 3.3(B))**.
- 1.6.18 **Post-hearing note:** *Please see the Applicant's response to Action Point 8 below.*
- 1.6.19 The ExA also noted that no precedent for the drafting of Article 9 (planning permission) is provided in the **Explanatory Memorandum (Doc Ref. 3.3(B))**.
- 1.6.20 Mr Flanagan on behalf of the Applicant noted that it was correct as far as the Applicant understands it that there is no precedent drafting in any made DCO which addresses the potential uncertainty which has come out of the *Hillside* decision. He referred to examples of draft DCOs which are currently at recommendation stage or before the Secretary of State for determination that include similar drafting which is design to achieve the same purpose as Article 9(1) of the **Draft DCO (Doc Ref. 3.1(B))**. He noted the possibility that during the course of the Examination a DCO would be made including this wording. He confirmed that the Applicant would update the ExA accordingly if this happens, but would provide a written response in the meantime.
- 1.6.21 **Post hearing note:** *Please see the Applicant's response to Action Point 9 below.*
- 1.6.22 In respect of Article 9(2), the ExA asked how anyone with the benefit of a condition in a planning permission that ceases to have effect "from the date the authorised development is commenced" would be aware of that information. He asked whether there should be a requirement to pay compensation in relation to any planning permission conditions that cease to have effect as a result of the Project commencing.
- 1.6.23 Mr Flanagan responded to explain that there is no direct mechanism for informing those people, but he noted that the provision only "bites" insofar as there is incompatibility with the requirements of the DCO, meaning that in practice its application is likely to be very limited. He confirmed the Applicant's written response would cover the point on compensation provisions.
- 1.6.24 **Post-hearing note:** *Please see the Applicant's response to Action Point 10 below.*
- 1.6.25 In relation to Article 9(3), the ExA noted that this article appears to obviate the need for a change to the DCO through section 153 of the Planning Act 2008 and asked the Applicant to justify this.
- 1.6.26 Mr Flanagan on behalf of the Applicant responded to confirm that this was not the intention of that provision. It is included for the avoidance of doubt, to ensure that Articles 9(1) and (2) are not inadvertently preventing the Applicant from being able to do what the Order grants consent for, and nor is the local planning authority prevented from granting planning permission for development within the Order Limits. It is legal drafting to make clear that the local planning authority is not prevented from granting planning permission for development that would not conflict with the DCO, notwithstanding the inclusion of Article 9(1) to deal with the issue raised in the *Hillside* decision.

- 1.6.27 In respect of Article 10 (defence to proceedings in respect of statutory nuisance), the ExA noted that **Environmental Statement Volume 2, Chapter 14: Noise (Doc Ref. 5.2)** [APP-038] states there is not expected to be any significant construction noise effects. If the Applicant is confident that these findings are acceptable, the ExA queried why this article is necessary.
- 1.6.28 In response, Mr Flanagan explained that the entitlement to a defence in respect of statutory nuisance should not depend on the outcome of the assessments set out in the Environmental Statement. The provision in the Planning Act 2008 in respect of nationally significant infrastructure projects to have a defence against statutory nuisance is in recognition of their importance and, in this case, urgency. He noted that it is obviously preferable that there will not be those effects, and it will be the case with most DCOs that they are reduced to acceptable levels. However, that should not mean that this defence disappears in case the contrary were to transpire. He also confirmed that the **Statutory Nuisance Statement (Doc Ref. 7.2)** [APP-147] (paragraph 2.3.4) explains that it is appropriate to have this article notwithstanding there is no expectation that the Project will give rise to statutory nuisances. This is standard drafting that can be identified in precedent.
- 1.6.29 The ExA asked whether the article would also apply to other forms of nuisance falling under section 79 of the Environmental Protection Act 1990?
- 1.6.30 Mr Flanagan responded to note this would be confirmed in writing.
- 1.6.31 **Post-hearing note:** Please see the Applicant's response to Further Action Point 3 below.
- 1.6.32 In relation to Article 11 (street works and temporary closure of streets and private means of access), the ExA asked for justification as to why the powers are appropriate and proportionate. He noted it was not clear that pedestrians had been considered.
- 1.6.33 Mr Flanagan responded on behalf of the Applicant to confirm that this issue would be covered during Issue Specific Hearing 2 and in writing.
- 1.6.34 **Post-hearing note:** An oral response on this matter was provided by the Applicant during Issue Specific Hearing 2. Please see section 1.5 of the **Written Summary of Oral Submissions at Issue Specific Hearing 2 and Response to Action Points (Doc Ref. 8.5.5)**. Section 4.1 of the **Explanatory Memorandum (Doc Ref. 3.3(B))** also sets out where precedent for this article can be found in numerous made DCOs.
- 1.6.35 In relation to Article 12 (power to alter layout etc. of streets), the ExA noted that the powers apply to land whether or not within the Order Limits. He asked that the justification for this be made clear and queried if the power should be limited to identified streets.
- 1.6.36 Mr Flanagan confirmed that the Applicant would respond in full in writing, but noted that there is a specific control in paragraph (4) of the Article, which provides that the

powers conferred by Article 12(2) may not be exercised without the consent of the street authority.

- 1.6.37 **Post-hearing note:** Please see the Applicant's response to Action Point 11 below.
- 1.6.38 The ExA asked that the justification for the inclusion of Article 20 (discharge of water) in the **Explanatory Memorandum (Doc Ref. 3.3(B))** be updated to refer to section 146 (discharge of water) of the Planning Act 2008.
- 1.6.39 **Post-hearing note:** Please see the Applicant's response to Action Point 12 below.
- 1.6.40 In relation to Article 31 (temporary use of land for carrying out the authorised development), the ExA noted that the **Explanatory Memorandum (Doc Ref. 3.3(B))** includes justification as to why these wide powers are necessary and appropriate. He noted that he could not see what steps the Applicant has taken to alert all the landowners that the exercise of these powers over their land is a possibility.
- 1.6.41 Mr Flanagan confirmed that a response would be provided in Compulsory Acquisition Hearing 1 ('CAH1') or in writing.
- 1.6.42 **Post hearing note:** An oral response on this matter was provided by the Applicant during Compulsory Acquisition Hearing 1. Please see paragraphs 1.3.10 and 1.3.11 and Action Point 1 in the **Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and Response to Action Points (Doc Ref. 8.5.4)**.
- 1.6.43 The ExA then asked whether the provisions of Article 31 (temporary use of land for carrying out the authorised development) should more accurately reflect the (yet to be enacted) temporary possession powers in Neighbourhood Planning Act 2017.
- 1.6.44 In response, Mr Flanagan on behalf of the Applicant noted that the Applicant is entitled to and is obliged to operate under the regime that exists at present for nationally significant infrastructure projects, rather than another regime that does not apply and is not yet in force. On that basis, he explained that it would not be appropriate to import that regime into the **Draft DCO (Doc Ref. 3.1(B))**. He noted that the drafting in Article 31 is precedented: the Neighbourhood Planning Act 2017 has been around for a number of years and made DCOs have taken the same approach as the Applicant.
- 1.6.45 **Post-hearing note:** Please see the Applicant's response to Action Point 13 below.
- 1.6.46 The ExA referred to Article 34 (statutory undertakers) and explained the exercise of section 127 of the Planning Act 2008. He noted that where an objection has been made by a statutory undertaker and not withdrawn, the SoS cannot authorise compulsory acquisition powers over their land unless it is confirmed that the exercise of the powers will not result in serious detriment to the carrying on of the undertaking. The ExA asked the Applicant to explain how it intends to address these concerns.

- 1.6.47 In response, Mr Flanagan confirmed that the Applicant is currently in negotiations with all affected statutory undertakers that have responded to and engaged with the Application. He noted that the **Schedule of Negotiations (Doc Ref. 4.4(A))** sets out the status of negotiations as at the date the Application was made. He confirmed that negotiations have since advanced, and noted there is also a SoCG setting out the position with National Grid Electricity Transmission plc.
- 1.6.48 He further confirmed that the Applicant has no reason to think that agreement will not be reached with all statutory undertakers prior to the close of the Examination. He explained that there is nothing in the rights the Applicant is seeking, when coupled with the protective provisions in Schedule 13 to the **Draft DCO (Doc Ref. 3.1(B))**, that leads the Applicant to the conclusion that serious detriment to any of their undertakings would arise. He noted that the proposals to extend the substation and pass cables underneath the railway were common occurrences, noting that cables already exist under the railway. Mr Flanagan also noted that none of the statutory undertakers have submitted an in principle objection. Instead, they are maintaining an objection pending agreement of protective provisions. He confirmed that an update would be provided during CAH1 and at Deadline 1. He also confirmed the ExA would be kept updated on progress as the Examination progresses.
- 1.6.49 **Post-hearing note:** *Please see the Applicant's response to Action Point 14 below.*
- 1.6.50 The ExA noted that the power in Article 45 (felling or lopping of trees and removal of hedgerows) is broad, as it enables the undertaker to fell or lop any tree or shrub "near to any part of the authorised development". He asked the Applicant to consider whether this should be limited by removing "near to".
- 1.6.51 Mr Flanagan responded on behalf of the Applicant to confirm that this would be considered, although he noted that the wording of the Article was based on established precedent.
- 1.6.52 **Post-hearing note:** *Please see the Applicant's response to Action Point 15 below.*
- 1.6.53 The ExA referred to Article 47 (requirements, appeals, etc.) and noted that in the South Humber Bank Energy Centre Order 2021, the SoS amended Article 28, which sought to apply the appeals procedure from the Town and Country Planning Act 1990 to the Order. For that project, the Decision Letter noted that a specific appeal procedure was preferred. The ExA asked the Applicant to explain and more fully justify the appeal process in **Explanatory Memorandum (Doc Ref. 3.3(B))**. He also requested confirmation that the discharging authority is willing to assume the discharging role, and that the arbitrator named in Article 46 (arbitration) and Schedule 16 was willing to assume this role.
- 1.6.54 In response, Mr Flanagan confirmed that the Applicant would update the **Explanatory Memorandum (Doc Ref. 3.3(B))** and would work with ABC to provide the required confirmation.
- 1.6.55 **Post-hearing note:** *Please see the Applicant's response to Further Action Point 4 below.*

- 1.6.56 In relation to Requirement 9 (archaeology) in Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))**, the ExA asked how archaeological assets previously identified have been considered and what mechanism will be adopted if any further archaeology is found.
- 1.6.57 In response, Mr Flanagan confirmed that the Applicant has explained this in the **Archaeological Management Strategy ('AMS') (Doc Ref. 7.17)** [[APP-162](#)]. This sets out what has been done in respect of existing heritage and what will happen if any further investigation discovers new archaeology.
- 1.6.58 The ExA asked KCC whether they had discussed the AMS with the Applicant and whether they were happy with it.
- 1.6.59 Ms Potter on behalf of KCC confirmed that they had liaised with the Applicant and referred to the detail provided in KCC's Relevant Representation [[RR-156](#)]. She confirmed this would be supplemented in KCC's Local Impact Report and Written Representation.
- 1.6.60 Mr Tennant on behalf of AMMSG noted that the Applicant had stated it does not consider that the Project will result in a statutory nuisance, but is still looking to disapply provisions relating to statutory nuisance. He asked whether that would prevent a resident making a claim. In response, the ExA confirmed that disapplication would have that effect.

1.7 Agenda Item 6: Next steps

- 1.7.1 Mr Flanagan read out the list of Action Points from the hearing.

1.8 Agenda Item 7: Closing

- 1.8.1 The ExA thanked participants and closed ISH1 at 12:20pm.

2 The Applicant's written submissions in response to Action Points

2.1 List of action points arising during the hearing

2.1.1 Table 2-1 below sets out the list of action points that arose during the hearing and the Applicant's post-hearing response to them.

Table 2-1: Action points arising during the hearing and the Applicant's post-hearing responses

Action Point	Applicant's response
Action Point 1: The Applicant to provide an update on the UK Power Networks investigations regarding the use of the existing ducts.	<p>UK Power Networks has confirmed to the Applicant that it has completed its investigations to consider the soundness of the existing ducts under the railway on 21 November 2024. UK Power Networks has further confirmed its intention to relocate the existing 33kV electrical cables to release one of the existing ducts to allow the installation of the new 132kV cable for the Project, which is the preferred option (Option A). However, to ensure that the delivery of the Project is not jeopardised in the event that unforeseen circumstances mean the existing ducts are not available to be used by the Project due to future damage or other unforeseen circumstances, the land needed for the alternative option of installing new ducts under the railway (Option B) is included within the Application.</p> <p>Please also see Action Point 4 in the Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and Responses to Action Points (Doc Ref. 8.5.4) in which the Applicant has confirmed that confirmed that the land needed for Option B has been included in the Book of Reference (Doc Ref. 4.1) [APP-019] and the Land Plans (Doc Ref. 2.1) [APP-007].</p>
Action Point 2: The Applicant to consider adding specific reference to 'sequencing' in Requirement 3 in the Draft DCO.	<p>Paragraph (1) in Requirement 3 in Schedule 2 to the Draft DCO (Doc Ref. 3.1(B)) has been amended to read as follows:</p> <p><i>"3.—(1) The authorised development must not be commenced until a written scheme setting out the phases <u>and sequencing</u> of construction of the authorised development has been submitted to and approved by the local planning authority."</i></p> <p>Paragraph 9.3.6 of the Explanatory Memorandum (Doc Ref. 3.3(B)) has also been updated.</p>

Action Point	Applicant's response
<p>Action Point 3: The Applicant to consider amending the timing trigger in Requirement 11 of the Draft DCO to earlier than preoccupation.</p>	<p>Paragraph (1) in Requirement 11 in Schedule 2 to the Draft DCO (Doc Ref. 3.1(B)) has been amended to read as follows:</p> <p><i>"11.—(1) No phase of the authorised development may commence until a OSWDS for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with Kent County Council."</i></p> <p>Paragraph 9.3.15 of the Explanatory Memorandum (Doc Ref. 3.3(B)) has also been updated.</p>
<p>Action Point 4: The Applicant to provide examples of precedent drafting for the word "maintain" in made DCOs.</p>	<p>The Draft DCO (Doc Ref. 3.1(B)) defines "maintain" in Article 2(1) to include <i>"inspect, upkeep, repair, refurbish, adjust, alter, remove, reconstruct and replace in relation to the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of "maintain" must be construed accordingly"</i>.</p> <p>The Explanatory Memorandum (Doc Ref. 3.3(B)) at paragraph 2.3.2 explains that <i>"A definition of 'maintain' is included to clarify what is authorised under Article 4 (see below) so as to provide the Applicant with certainty. In particular it does not permit the Applicant to carry out any maintenance operations which would cause materially new or materially different environmental effects to those identified in the Environmental Statement (Doc Ref. 5.1 – 5.4)". Article 4 states: "The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise."</i></p> <p>Article 2(1) therefore operates to define the extent of the maintenance powers in Article 4, which is limited to maintenance of the authorised development only. Whilst this is necessarily broad to allow the Applicant the required flexibility to maintain and keep in good condition the Project over its operational lifespan, the prohibition on carrying out maintenance works that would cause materially new or materially different environmental effects to those identified in the Environmental Statement ensures that there has been a worst-case assessment of the environmental effects and that any effects have been appropriately mitigated.</p> <p>The approach taken in Article 2(1) is clearly established in precedent, including The Little Crow Solar Park Order 2022 (Article 2(1)) and The Cleve Hill Solar Park Order 2020 (Article 2(1)).</p>

Action Point	Applicant's response
<p>Action Point 5: The Applicant to consider any updates to the Outline Operational Management Plan regarding community outreach in respect of maintenance works during the operation of the Project.</p>	<p>The Outline OMP (Doc Ref. 7.11(A)) has been updated to reflect the comment made in respect of community outreach. The document has been updated to include the following:</p> <p><i>"Advanced notification of maintenance activities</i></p> <p><i>Prior to carrying out any material maintenance activities on the Site that could give rise to disturbance on or disruption to local residents and businesses, notification will be given to the local planning authority and Aldington and Bonnington Parish Council, save in respect of any emergency works."</i></p>
<p>Action Point 6: The Applicant to provide a written response to Mr Brett's Procedural Deadline A submission.</p>	<p>A response to the Procedural Deadline A submissions is set out in the Response to Additional Submission Made at Procedural Deadline A (Doc Ref. 8.1).</p>
<p>Action Point 7: The Applicant to provide further explanation for definitions of 'public right of way', 'easement', 'private road' and 'statutory nuisance' in so far as they are different from the definitions in section 235 of the Planning Act 2008.</p>	<p>The Applicant notes that neither the Draft DCO (Doc Ref. 3.1(B)) nor section 235 of the Planning Act 2008 define the terms <i>"public right of way", "easement", "private road" or "statutory nuisance"</i>. This aligns with common practice in a number of made development consent orders, including the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022, the Longfield Solar Farm Order 2023 and the Mallard Pass Solar Farm Order 2024.</p> <p>The Applicant has amended the definition of "business day" in Article 2(1) of the Draft DCO (Doc Ref. 3.1(B)) to: <i>"means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or an English public holiday or bank holiday under section 1 of the Banking and Financial Dealings Act 1971"</i>.</p>
<p>Action Point 8: The Applicant to provide precedent for Article 8(5) in the Draft DCO regarding the Community Infrastructure Levy Regulations 2010 and to update the Explanatory Memorandum accordingly.</p>	<p>The Applicant has updated paragraph 3.6.6 of the Explanatory Memorandum (Doc Ref. 3.3(B)) to explain that the drafting of Article 8(5) is preceded in made DCOs, including Article 6(3) the Longfield Solar Order 2023, Article 6(3) of the Cottam Solar Project Order 2024 and Article 6(5) of the Mallard Pass Solar Farm Order 2024.</p>

Action Point	Applicant's response
	<p>ABC confirmed during ISH1 that it is not currently a CIL charging authority. However, ABC's website states that <i>"the plans for implementing CIL in Ashford are currently on hold, until the proposals for potential changes to the system set out by the Government are formalised."</i>⁶</p> <p>Notwithstanding the current position, ABC could become a CIL charging authority in the future. The drafting in Article 8(5) is therefore included on a precautionary basis to provide for that eventuality.</p>
<p>Action Point 9: The Applicant to provide further explanation for Article 9(1) in the Draft DCO regarding Hillside.</p>	<p>The Explanatory Memorandum (Doc Ref. 3.3(B)) explains that there is potential uncertainty following the Court's decision in <i>in Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30</i> (Hillside) and that Article 9(1) of the Draft DCO (Doc Ref. 3.1(B)) seeks to address that potential uncertainty to ensure that delivery of the Project, which is an urgently needed project of national significance, is not jeopardised. It is not considered that the Rochdale Envelope addresses the identified issue, as that allows flexibility within the approved design, and does not address a scenario in which a separate consent is subsequently granted. It is further noted that any separate consent would need to follow the applicable regulatory framework governing the grant of that consent at that time, meaning that there cannot be any question of rigorous processes not being followed.</p> <p>The Applicant has not identified precedent drafting in made DCOs that addresses this uncertainty, though when drafting Article 9 it took into account emerging drafting which seeks to tackle the uncertainty as follows:</p> <p>a) The draft DCO for the Lower Thames Crossing project, which is currently in the Decision stage, includes bespoke drafting in Article 56 to address the <i>Hillside</i> uncertainty. Article 56(4) states: <i>"Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised."</i></p> <p>b) The draft DCO for the London Luton Airport Expansion project, which is currently in the Decision stage, includes similar drafting targeted at the Hillside uncertainty in Article 45(4) which states: <i>"Notwithstanding the terms of paragraph (3) or any other part of the Order, development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act</i></p>

⁶ See here: <https://www.ashford.gov.uk/planning-and-development/planning-policy/community-infrastructure-levy-cil/>

Action Point	Applicant's response
	<p><i>that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order."</i></p> <p>c) The draft DCO for the Gatwick Airport Northern Runway Project, which is currently in the Decision stage, includes drafting that is similar to that in the Draft DCO for Stonestreet Green Solar. Article 9(2) states: <i>"The authorised development may be carried out or continue to be carried out, and the airport may be operated or continue to be operated, pursuant to this Order notwithstanding the initiation of development pursuant to any planning permission which may be physically incompatible with the authorised development or inconsistent with any provision of this Order."</i></p> <p>Regardless of the specific drafting that has been included to address the uncertainty, the fact that a number of NSIP promoters have considered it necessary to include a provision to address this uncertainty demonstrates that this is a legitimate concern that it is appropriate for the Draft DCO to seek to address.</p>
<p>Action Point 10: The Applicant to: (i) consider the implications of Article 9(2) in the Draft DCO and the application of compensation provisions for the revocation of conditions; and (ii) provide further explanation on the purpose of Article 9(3) in the Draft DCO.</p>	<p>The provision in Article 9(2) of the Draft DCO (Doc Ref. 3.1(B)) is important to remove uncertainty and risk regarding the interaction between the Order and other planning permissions. As the Project is an urgently needed nationally significant infrastructure project, it is necessary to ensure that delivery of the Project is not delayed or jeopardised by the existence of any planning conditions that bind the land prior to the grant of the DCO. Article 9(2) would not remove the benefit of any such planning permission, rather it would have the effect of superseding any incompatible conditions imposed on the grant of those permissions to facilitate the delivery of the Project. Therefore, it is not necessary or appropriate for the DCO to include provisions relating to the payment of compensation in respect of land that is burdened by restrictions imposed by those conditions.</p> <p>In order to ensure that ABC, as the local planning authority, is notified should reliance on this article become necessary in future, the Applicant has added the following as a new sub-paragraph (3) to Article 9: <i>"Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (2), it must notify the local planning authority as soon as reasonably practicable."</i></p> <p>With regard to Article 9(3) (to be renumbered 9(4)), this provision is included for the avoidance of doubt to make clear that the local planning authority is not prevented, following the grant of the DCO, from granting planning permission for development on land within the Order Limits that would not</p>

Action Point	Applicant's response
	<p>conflict with the DCO. This provision is necessary to ensure that minor works can be separately consented without needing to rely on an amendment to the Order which would be disproportionate and impractical in the circumstances.</p> <p>The Applicant has not identified precedent for this drafting in made DCOs but took into account emerging drafting in the draft DCO for the Gatwick Airport Northern Runway Project (see Article 9) and the draft DCO for the London Luton Airport Expansion project (see Article 45).</p>
<p>Action Point 11: The Applicant to provide justification for the powers in Article 12 in the Draft DCO.</p>	<p>Article 12(1) of the Draft DCO (Doc Ref. 3.1(B)) gives the undertaker a specific power, for the purposes of the authorised development, to carry out works in the streets and in the manner specified in Schedule 5. The works in Schedule 5 are those works which have been identified as specific works that need to be undertaken.</p> <p>However, it is recognised that flexibility is required to enable the undertaker to carry out any other street works that may be identified by the undertaker or the relevant highway authority as being required to facilitate the delivery of the Project, for example through the process of agreeing the detailed Construction Traffic Management Plan or Decommissioning Traffic Management Plan. Article 12(2) therefore gives the undertaker a general power to carry out street works within the regime imposed by the Order. This applies to any street whether or not within the Order limits, such as along the proposed traffic construction route. The breadth of the power is controlled through the following mechanisms:</p> <ul style="list-style-type: none"> (a) the power only applies <i>"for the purposes of constructing, operating, maintaining or decommissioning the authorised development"</i>; (b) the power is subject to the control in paragraph (3) which provides that the <i>"undertaker must restore any street that has been temporarily altered pursuant to paragraph (2) to the reasonable satisfaction of the street authority"</i>; and (c) the power is subject to the control in paragraph (3) which provides that the <i>"powers conferred by paragraph (2) may not be exercised without the consent of the street authority"</i>. <p>Together these mechanisms appropriately control the use of this power.</p> <p>The SoS has considered this wording previously and approved it in a made DCO – see Article 13 of The Sizewell C (Nuclear Generating Station) Order 2022.</p>

Action Point	Applicant's response
	<p>Additionally, the Applicant notes that recent solar DCOs include the same powers as are provided for in Article 12, for example Article 9 of the Cottam Solar Project Order 2024. Paragraphs (2) to (5) of that article contain what are in principle the same powers as Article 12(2) to (5) of the Draft DCO. The drafting in The Cottam Solar Project Order 2024 does not expressly state that the powers apply whether or not the street in question is within the Order Limits, however, the practical effect of the power is that it extends beyond the Order Limits, as the Article does not expressly limit the extent of the power to the Order Limits.</p>
<p>Action Point 12: The Applicant to update the Explanatory Memorandum regarding Article 20 in the Draft DCO to cite relevant precedents.</p>	<p>The Explanatory Memorandum (Doc Ref. 3.3(B)) explains at paragraph 6.1.1 that <i>"Article 20 is a modified model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, operation, maintenance or decommissioning of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions."</i></p> <p>The Applicant has updated section 6.1 of the Explanatory Memorandum (Doc Ref. 3.3(B)) to explain the relationship between Article 20 and section (discharge of water) of the Planning Act 2008 and to refer to recent DCOs containing this article (these being Article 9 of the Little Crow Solar Park Order 2022 and Article 25 of the Sizewell C (Nuclear Generating Station) Order 2022).</p>
<p>Action Point 13: The Applicant to provide further commentary and justification on Article 31 in the Draft DCO in light of the provisions of the Neighbourhood Planning Act 2017 and whether the drafting should adopt the provisions in that Act.</p>	<p>Article 8(1)(b) of the Draft DCO (Doc Ref. 3.1(B)) provides that the provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to the temporary possession of land under Articles 31 and 33. The Applicant notes that the rationale for this disapplication is explained in paragraph 3.6.3 of the Explanatory Memorandum (Doc Ref. 3.3(B)). This sets out that the drafting of this article is well precedented in made DCOs. The explanation notes that it is accepted practice that the (as yet not in force) provisions of the Neighbourhood Planning Act 2017 are disapplied, with provisions of the Order instead setting out how the temporary possession powers are to be exercised.</p>
<p>Action Point 14: The Applicant to update the Schedule of Negotiations throughout the Examination and by Deadline 1.</p>	<p>Please see the Schedule of Negotiations (Doc Ref. 4.4(A)), which will be updated by the Applicant as the Examination progresses.</p>

Action Point

Applicant's response

Action Point 15: The Applicant to provide justification for the drafting of Article 45 in the Draft DCO regarding the use of the word "near" and consider whether an alternative of "encroaching" upon would be appropriate.

The Applicant notes that paragraph 8.6.1 of the **Explanatory Memorandum (Doc Ref. 3.3(B))** explains that the drafting of Article 45 is based on a model provision and is included in numerous made DCOs, and has amended the wording of this paragraph to refer to a recent example.

During ISH1, the ExA noted that Article 45(1) gives the undertaker the power to *"fell or lop any tree, or shrub near any part of the authorised development"* and particularly queried whether *"near to"* should be removed and the power instead be restricted to exercise only within the Order Limits.

The Applicant notes that this wording is taken from paragraph 39(1) in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, which states:

"The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or

(b) from constituting a danger to passengers or other persons using the authorised project."

Additionally, the wording of Article 45(1) appears in recently made solar DCOs, for example, see Article 38(1) of the Cottam Solar Project Order 2024 and 35(1) of the Sunnica Energy Farm Order 2024.

The extent of this power is considered necessary to enable the Project to be delivered without impediment, and clearly has been accepted as necessary by the SoS in similar recent DCOs.

2.2 List of further action points arising during the hearing and the Applicant's post-hearing responses

2.2.1 In addition to the points identified in the **Action Points arising from Preliminary Meeting and Hearings: w/c 18 November 2024 [EV7-001]** which the Applicant has provided written submissions in response to in Table 2-1 above, the Applicant has subsequently identified additional points during ISH1 where it committed to providing the ExA with further information in writing. The Applicant considers it appropriate to address these points, and as such the table below sets out the Applicant's written submissions in respect of these further action points.

Table 2-2: Further action points raised during the hearing and the Applicant's post-hearing response

Further Action Point	Applicant's response
<p>Further Action Point 1: Applicant to confirm details of the provisions in the Outline Operational Management Plan ('OMP') (Doc Ref. 7.11(A)) dealing with operation and maintenance of the Project.</p>	<p>The Outline Operational Management Plan ('Outline OMP') (Doc Ref. 7.11(A)) sets out a framework for the management of the Project during its 40-year operational life.</p> <p>The Outline OMP seeks to ensure that the effects of the operation of the Project are mitigated appropriately. More specifically, the Outline OMP aims to ensure that: (a) relevant mitigation measures set out in the Environmental Statement are secured and implemented during operational activities; and (b) relevant legislation and Government and industry standards are implemented and adhered to.</p> <p>The Outline OMP includes the following information:</p> <ul style="list-style-type: none"> ▪ Operational Management; ▪ Mitigation, Management and Monitoring; ▪ Implementation and Operation; and ▪ Monitoring and Reporting. <p>Schedule 2 to the Draft DCO (Doc Ref. 3.1(B)) includes Requirement 12, which provides that prior to the operation of the Project, an operational management plan must be submitted to and approved by ABC, which must be in accordance with the Outline OMP. The OMP must then be implemented as approved.</p> <p>The appointed operational contractor will be responsible for working in accordance with the environmental controls documented in the approved OMP. The overall responsibility for implementation of the detailed OMP will lie with the appointed operational contractor as a contractual</p>

Further Action Point	Applicant's response
	responsibility to the undertaker (as defined in the Draft DCO (Doc Ref. 3.1(B))), as the undertaker is ultimately responsible for compliance with the DCO.
Further Action Point 2: Applicant to provide further details on the approach to design flexibility in the Application, including why limits of deviation have not been used.	The section of Table 1-1 headed "Development parameters" in the Response to Additional Submission Made at Procedural Deadline A (Doc Ref. 8.1) provides a detailed explanation of the Applicant's approach to design flexibility in the Application.
Further Action Point 3: Applicant to confirm whether Article 10 of the Draft DCO (Doc Ref. 3.1(B)) would also apply to forms of nuisance, other than noise, falling under section 79 of the Environmental Protection Act 1990 ('EPA').	<p>The Statutory Nuisance Statement (Doc Ref. 7.2) [APP-147] confirms that the Project is not anticipated to give rise to statutory nuisance and that any matters that have the potential to do so have been assessed and mitigated, with appropriate controls included in the Draft DCO (Doc Ref. 3.1(B)).</p> <p>Nonetheless, Article 10 (defence to proceedings in respect of statutory nuisance) of the Draft DCO (Doc Ref. 3.1(B)) contains a provision that would provide a defence to proceedings in respect of statutory nuisance in respect of paragraph (g) of section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to the criteria set out in that Article.</p> <p>The Applicant considers that this approach provides a proportionate defence to proceedings in respect of statutory nuisance. It does not consider it proportionate or necessary to extend the defence further than in respect of nuisances falling under section 79(1)(g) of the EPA. This approach also follows the precedent of recently made solar DCOs – see, for example, Article 7 of The Longfield Solar Farm Order 2023 and Article 7 of the Cottam Solar Project Order 2024.</p>
Further Action Point 4: Discharge mechanisms in Part 2 Sch 2 of the dDCO - provide fuller justification for those discharge mechanisms and provide confirmation that the discharging authority is willing to be the discharging authority.	During ISH1, the ExA referred the South Humber Bank Energy Centre Order 2021, in which the SoS amended Article 28 which sought to apply the appeals procedure from the Town and Country Planning Act 1990 (' 1990 Act ') to that Order. He noted that the Decision Letter explained that a specific appeal procedure was preferred, rather than the Order applying the provisions of the 1990 Act. The Applicant confirms that the Draft DCO (Doc Ref. 3.1(B)) does provide such a bespoke appeal procedure rather than seeking to apply to 1990 Act provisions.

Further Action Point

Applicant's response

Article 47(2) of the **Draft DCO (Doc Ref. 3.1(B))** provides that *"Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 1 of that Schedule"*.

Paragraph 8.8.1 of the **Explanatory Memorandum (Doc Ref. 3.3(B))** explains that *"Inclusion of this Article and procedure is considered necessary to ensure the expedient delivery of the authorised development"*. The Explanatory Memorandum then lists the precedents on which this article has been based.

Schedule 2, Part 2, paragraph 18 of the **Draft DCO (Doc Ref. 3.1(B))** deals with the scenario in which the local planning authority considers that further information is necessary following receipt of an application for any consent, agreement or approval required by a requirement or for any consent, agreement or approval further to any document referred to in any such requirement. The applicable time periods, which depend on whether or not the relevant requirement specifies that consultation with a consultee is required, mirror those in Schedule 2, Part 2 of The Little Crow Solar Park Order 2022.

However, the Applicant notes the concerns raised by Ashford Borough Council at Issue Specific Hearing 1 on 2 November 2024 regarding the timings specified in paragraph 18. The Applicant therefore proposes to replace sub-paragraphs (2) to (4) in paragraph 18 with the following drafting which mirrors that in Schedule 16, paragraph 3 of The Cottam Solar Project Order 2024 and Schedule 16, paragraph 3 of The Mallard Pass Solar Farm Order 2024:

"(2) In the event that the local planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the local planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the local planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the local planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

Further Action Point	Applicant's response
	<p><i>(4) In the event that the local planning authority does not give notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.</i></p> <p><i>(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 17 and 18."</i></p> <p>It has been agreed with ABC that they are content to act as the discharging authority in respect of the requirements in Schedule 2 to the Draft DCO (Doc Ref. 3.1(B)).</p> <p>The Examining Authority also requested confirmation that the arbitrator named in Article 46 (arbitration) and Schedule 16 of the Draft DCO (Doc Ref. 3.1(B)) is willing to assume this role. Article 46 provides that if there is a difference under any provision of the Order then, unless otherwise provided for, this shall be settled in arbitration by a single arbitrator. Article 46 further provides that the arbitrator is to be agreed upon by the parties or in the absence of agreement then appointed by the SoS. The existence of the arbitrator is therefore not known at this stage. However, it is reasonable to assume that the arbitrator would only accept the instruction if they were willing and professionally capable of fulfilling that role if needed. The arbitrator for the purposes of Schedule 16 is the arbitrator appointed pursuant to Article 46 (see Schedule 16, paragraph 1(1)).</p>