Stonestreet Green Solar

Response to Additional Submission Made at Procedural Deadline A

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1 Response to Aldington and Bonnington Parish Council's Procedural Deadline A Submission

1.1 Introduction

1.1.1 These written submissions respond to the substantive issues raised in Aldington and Bonnington Parish Council's submission at Procedural Deadline A (dated 5 November 2024 and entitled 'Counsel's Note') [PD1-004] that require the Applicant to respond. The other submissions received at Procedural Deadline A were in respect of procedural matters relating to how the Examination is to be conducted, which are not for the Applicant to respond to.

1.1.2 The Applicant provided oral submissions in response to this submission during Issue Specific Hearing 1 on 20 November 2024. This document should therefore be read in conjunction with paragraphs 1.4.7 – 14.9 of the **Written Summary of Oral Submissions at Issue Specific Hearing 1 and Response to Action Points (Doc Ref. 8.5.3)**.

1.1.3 These written submissions follow the structure of the points raised in the Parish Council's submission regarding the **Draft Development Consent Order ('Draft DCO') (Doc Ref. 3.1(B))**. They cover the project description in Schedule 1, the development parameters, associated development, terminology used, and clarifications on Articles 8(7) and 9.

Table 1-1: Response to submissions in 'Counsel's Note' produced on behalf of Aldington and Bonnington Parish Council

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Project description	
9. It seems to me that there would be merit in the Applicant being required to provide at the very least a range of output capacity, based on a reasonable understanding of the technology that exists at present and reasonable assumptions as to future improvements within the next 5 years. This is required to understand properly the public benefit to be derived from the project, and the land-take and other features of the development which are in fact required to provide that benefit.	The anticipated generating capacity has been set out within the **Environmental Statement ('ES') Volume 2, Chapter 15: Climate Change (Doc Ref. 5.2)** [APP-039]: *15.6.13 The Project generating capacity, assuming 655W panels and the illustrative design is circa 144 MW. This is lower than stated during the 2023 Statutory Consultation due to design changes in response to consultee feedback including the removal of panels within Fields 26 to 29 and other adjustments which has reduced the illustrative design panel numbers by approximately 8%. 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.* *15.6.14 Any generated electricity that exceeds the grid connection capacity of 99.9MW in a given time period, and therefore cannot be immediately exported, can be stored using the on-Site BESS and exported when the Project is generating less electricity, for example at night. This design approach maximises the contribution of the Project to the achievement of net zero, is consistent with policy, ensures the grid capacity secured by the Project is utilised as efficiently as possible and is also the approach taken by previously consented NSIP projects.* *15.6.15 Using conservative yield assumptions (assuming no improvement PV Panel output or efficiency) the Project is anticipated to export a total of 155,794 MWh of renewable electricity in the opening year. Over the 40-year lifetime of the Project, the total expected electricity export is 5,714,836 MWh.* Accordingly, the Applicant has already provided a range of output generating capacity, as sought by the Interested Party. As set out above, that range is c.144MW to c.165MW. The anticipated generating capacity is greater than the agreed grid connection export capacity of 99.9MW, as set out in the **Grid Connection Statement (Doc Ref. 7.3)** [APP-148]. This is a standard approach. In almost all cases the installed generating capacity of solar panels will be higher than the export capacity in the grid connection agreement. If a Battery Energy Storage System ('BESS') is co-located with solar panels, typically the sizing is around 1.4 to 1.8 times larger than the connection

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	agreement, depending on site specific matters. Applying this to the Project results in a generating capacity of c.140-180MW, which broadly accords with the range specified in the Application documents above. 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 export capacity maximises the renewable energy that is generated and exported to the electricity grid. There is a significant shortage of grid capacity across the country, leading to long delays before grid connections are made available to operators, and this has been identified as a limiting factor in achieving the Government's policy ambitions regarding renewable energy deployment. In light of that shortage, it would be contrary to policy not to seek to maximise the existing grid capacity that is available to the Project (i.e. by ensuring that use of the Project's grid connection capacity of 99.9MW is maximised). The Applicant notes that in Issue Specific Hearing 1 on 20 November 2024 questions were asked about generating capacity. The Applicant's oral submissions in response are recorded in its **Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 1 and Response to Action Points (Doc Ref. 8.5.3)** and **Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 2 and Response to Action Points (Doc Ref. 8.5.5)**. The Applicant there explained that reasonably foreseeable improvements in PV panel technology would further optimise the ability of the Project to meet the maximum grid connection capacity. It would not change the size of the area required for solar PV panels but would instead mean that even greater levels of renewable energy could be generated and exported to the electricity grid, allowing the Project to make an even greater contribution to the Government's renewable targets. In particular, the submitted illustrative design for the Project assumes 655 watt panels, which results in an installed capacity of c.144MW, as set out in the Application documents. Construction works on the Project are expected to commence in 2026, and between now and then increases in panel output of more than 30% are considered unlikely. Applying a 30% uplift means the panels would be around 850 watts. Even at this larger panel capacity, the energy generated by the Project could still be accommodated within the existing grid connection agreement with no energy loss. As to land-take, to which the Interested Party's submissions refer, the Project has been designed with the aim of maximising the amount of renewable energy that can be generated from the Site area, whilst minimising any identified adverse environmental effects. National Policy Statement for Renewable Energy Infrastructure (January 2024) ('NPS EN-3') states:

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	"2.10.17 Along with associated infrastructure, a solar farm requires between 2 to 4 acres for each MW of output. A typical 50MW solar farm will consist of around 100,000 to 150,000 panels and cover between 125 to 200 acres. However, this will vary significantly depending on the site, with some being larger and some being smaller. This is also expected to change over time as the technology continues to evolve to become more efficient. Nevertheless, this scale of development will inevitably have impacts, particularly if sited in rural areas." The DCO application area is c.192ha / 474 acres (see para. 2.1.3 of the **Planning Statement (Doc Ref. 7.6)** [APP-151]). Given the anticipated range of output capacity of c.144MW – c.165MW set out above, that amounts to between 2.87 and 3.29 acres per MW of output. That is in the middle of the 'acres for each MW' range set out in NPS EN-3 above. It clearly indicates that any suggestion that the land-take of the Project is excessive or that the Project has been oversized is incorrect. It should be noted that Fields 26, 27, 28 and 29 are set aside for green infrastructure with no PV panels or built structures other than the Project Substation in the northwestern portion of Field 26 (see the **Works Plans (Doc Ref 2.3(B))**). Excluding these non-infrastructure development fields from the calculation would further reduce the land use per MW for the Project to between 2.64 and 3.02 acres per MW. The Applicant has a strong commercial incentive to optimise generating capacity from the site and not to oversize the Project, given the costs of land acquisition. By way of comparison, the scheme consented by The Little Crow Solar Park Order 2022 had similar technical attributes to the Project, with a 99.9MW grid connection and an output capacity of 150MW of solar, and a BESS included. The Secretary of State's decision letter granting the DCO dated 5 April 2022 noted that *"the installed capacity for the proposed solar arrays would be around 150 megawatts ("MW")" and "the capacity limit for the agreed connection is 99.9MW at any time"* (paragraphs 4.9 – 4.10). Accordingly, it is clear that the Project is not oversized, and there is no evidence to the contrary. Finally, the Applicant notes that consultation feedback raising points in respect of the sizing of the Project and its generating capacity has been responded to the **Consultation Report – Appendix M: Regard had to Consultation Responses Received outside of Statutory Consultation (Doc Ref. 6.2)** [APP-144] (see in particular response on Themes 2 and 3 at pages 4 – 7).

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Development parameters	
10. Whilst the Applicant suggests that the Application is assessed on the basis of a Rochdale envelope (i.e. a maximum range of parameters, within which the Applicant will then be able to work), it is important to note that these parameters are not defined in the description of development in any way.	It is not correct that the parameters are in any way inadequately defined or controlled. Section 3.3 of **ES Volume 2, Chapter 3: Project Description (Doc Ref. 5.2(A))** describes the Rochdale Envelope, which comprises: ▪ the description of the "authorised development" for the Project (as set out in Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))**, ▪ the **Works Plans (Doc Ref 2.3(B))** (which set out spatially the areas in which the "work numbers" comprising the Project (as described in Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))**) can be carried out) and ▪ the **Design Principles (Doc Ref. 7.5(A))**. Requirement 4 of Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))** secures that the detailed design of the Project that is submitted for approval by the local planning authority must accord with the Design Principles (Requirement 4(2)), and that the Project must then be carried out in accordance with these approved details (Requirement 4(3)). Together, these three documents provide the parameters of the Rochdale Envelope, within which the Project must be carried out, and they are secured through the **Draft DCO (Doc Ref. 3.1(B))**. The Environmental Statement has assessed the effects of the Project within this Rochdale Envelope. Development within the Rochdale Envelope will not create new or different likely significant effects compared to what has been assessed.
11. This is important, as the Work Plans which accompany the dDCO are incredibly generic about the location of key elements of the scheme, merely providing an indicative hatching across most of the	The **Works Plans (Doc Ref 2.3(B))** should be read alongside the parameters defined by the **Design Principles (Doc Ref. 7.5(A))**. These parameters have formed the basis of the assessment set out with the ES.

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site for both the solar array (Work 1) and the battery component of the scheme (included within Work 2).	The identified extent of Work No. 1 (solar array) optimises the use of the site for renewable energy generation while being set within significant areas of green infrastructure across the site (Work No. 8), as defined on the Works Plans. In respect of Work No. 2 (balance of system and BESS works), the **Design Principles (Doc Ref. 7.5(A))** include the following: ▪ There will be up to 32 Inverter Station locations. ▪ BESS Units will be distributed across the Site with up to four Units at an Inverter Station. Where two Inverter Stations are paired, up to eight BESS Units can be located in a single area. The location of Work No. 2 (balance of system and BESS works) is then defined on the Works Plans. The location of Work No. 2 is set back from various areas across the site, as shown on the Works Plans, and the Design Principles provide that the *"The nearest residential receptor to any BESS Unit will be a minimum of 150m"* (page 3). It is noted that the Interested Party's submissions appear to have been produced without reference to the Design Principles (see list of documents at para. 6 of the Interested Party's submissions, which omits the Design Principles). Together, the **Works Plans (Doc Ref. 2.3(B)), Design Principles (Doc Ref. 7.5(A))** and description of the authorised development in the **Draft DCO (Doc Ref. 3.1(B))** clearly explain what is proposed and enable its effects to be assessed. The level of design and information set out in these documents is appropriate. The **Draft DCO (Doc Ref. 3.1(B))** provides a framework with an illustrative design enabling more detailed design to take place after the grant of the DCO. The Environmental Statement has assessed the effects of the Project based on the parameters and using this illustrative design, and the detailed design will not create new or different likely significant effects. The detailed design is subject to approval of the local planning authority, as set out in Requirement 4 of the **Draft DCO (Doc Ref. 3.1(B))**. This approach, which is very well-established for DCO solar projects, secures an outline design while providing for flexibility in terms of detail. Flexibility is important because of: ▪ The need to accommodate and respond to any findings from detailed work by micro-siting. This includes any more detailed work in respect of ground conditions and completion of intrusive survey

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	works pursuant to **Archaeological Management Strategy ('AMS') (Doc Ref. 7.17)** [APP-162]. The Draft DCO allows those findings to be accommodated in the detailed design if required. ▪ The fact 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. For example, the number of panels in each string of PV panels is dependent on electrical design. Power output increases as the technology (including PV panel technology) improves, and flexibility allows further improvements to be incorporated into the detailed design. The same applies to BESS. ▪ The need to progress projects expeditiously. National policy in Overarching National Policy Statement for Energy (January 2024) ('NPS EN-1') recognises the *urgent* need for large scale renewable schemes such as the Project (e.g. para. 3.3.58). The Applicant's approach avoids delay in bringing new generating capacity online, noting that delay is contrary to the policy objective of meeting the urgent need. National policy expressly recognises the need for flexibility, in particular in section 4.3 of 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'). EN-3 states clearly in respect of solar DCO schemes that: *"2.10.70 In many cases, not all aspects of the proposal may have been settled in precise detail at the point of application. Such aspects may include:* ▪ *The type, number and dimensions of the panels;* ▪ *Layout and spacing;* ▪ *The type of inverter and transformer; and* ▪ *Whether storage will be installed (with the option to install further panels as a substitute)."* That provides express policy support for the Applicant's approach.
12. There is no indication (as one might expect) as to maximums of e.g. the heights of different components of the development (including most	The **Design Principles (Doc Ref. 7.5(A))** set out the built parameters for each component of the Project, which have been assessed in the Environmental Statement and which cannot be exceeded when the Project is constructed. The parameters are adequate and precise for the outline stage of design, which is appropriate for the DCO. They plainly do not involve consent being sought for "a blank

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importantly under Works 1- 3); density of arrays (to understand the any of the infrastructure proposed under Work 2 (including batteries, intermediate substations, and water-related infrastructure; or even the number of parking spaces required at the project substation. All these (and other more precise maximum parameters) need to be included in the dDCO so that it is clear (i) what the Rochdale envelope actually is; and (ii) what is to be consented should the Application be granted. What the Applicant is currently seeking is in many ways a blank sheet of paper.	sheet of paper", contrary to the Interested Party's submissions. As noted above, the Interested Party's submissions do not appear to have regard to the Design Principles. In respect of the Interested Party's query in respect of height, the **Design Principles (Doc Ref. 7.5(A))** set out height parameters. For example, the **Design Principles (Doc Ref. 7.5(A))** provide that *"The PV panels will have a maximum height of 3.5m Above Ground Level ('AGL') and will be mounted with a minimum clearance of 0.8m AGL"* (page 2); and *"Inverter Stations will not exceed 4m in height AGL and will be a dark green or similar neutral colour"*, and *"Each BESS Unit will be single-stacked. BESS Units and DC-DC Converters will not exceed 4m in height and will be a dark green or similar neutral colour"* (page 2). As to density of arrays, the **Design Principles (Doc Ref. 7.5(A))** provide that *"The distance between each row of PV panels will be between 2m and 5m. A distance of at least 3.2m will be provided between the edge of PV panels and the security fencing to allow for maintenance"* (page 2). As to the Project Substation and associated works (Work No. 3), detailed parameters are provided on page 3 of the Design Principles (along with Schedule 1 of the **Draft DCO Doc Ref. 3.1(B)** and the **Works Plans (Doc Ref 2.3(B))**). As set out in the response to paragraph 10 above, these parameters are then secured through Requirement 4 (Detailed design approval) of Schedule 2 to the **Draft DCO Doc Ref. 3.1(B))**. The Applicant's approach on the above is fully consistent with precedent solar DCO examples that have been granted a DCO.
13. In particular, I have concerns about the approach to the battery element of the scheme. First, it appears to have 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. The battery storage element of the scheme is	Work No. 2 (balance of system and BESS works) relates to the inverters and BESS units. These are grouped together as they are functionally linked and located together. A dispersed approach to the BESS units has been taken such that they are physically located with the Inverter Stations across the site, as provided for in the **Design Principles (Doc Ref. 7.5(A))** (which states that *"BESS Units and DC-DC converters will be co-located with the Inverter Stations within bunded enclosures lined with a protective membrane"* (page 2). It therefore makes complete sense for the **Draft DCO Doc Ref. 3.1(B)** to group them together as one work number, i.e. Work No.2. Indeed, it could be confusing and unhelpful to seek to disaggregate them into separate work numbers as the Interested Party suggests. There are a number advantages to co-locating the BESS in this way, as detailed in Table 5.4 **ES Volume 2, Chapter 5: Alternatives and Design Evolution (Doc Ref. 5.2(A))** [AS-010].

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conceptually separate however from the pure transfer of electricity from solar array to project substation: it has its own form and infrastructure needs which are separately identifiable from those of the solar array. The battery storage element should be its own identified Work, allowing it to be assessed as an individual component of the scheme.	The **Design Principles (Doc Ref. 7.5(A))** sets out the parameters for the inverters and BESS units, as set out above. Paragraph 3.3.9 of **ES Volume 2, Chapter 3: Project Description (Doc Ref. 5.2(A))** then notes *"The Rochdale Envelope for this ES comprises the description of the "authorised development' for the Project (as set out in Schedule 1 of the **Draft Development Consent Order ('DCO') (Doc Ref. 3.1)** , **the Works Plans (Doc Ref 2.3)** and the **Design Principles (Doc Ref. 7.5)**)".*
14. Secondly, given that there is no number of or approximate locations for the battery storage and connected elements of the scheme, I find it difficult to understand how the Rochdale envelope can be robustly created – is the Applicant going to assume as a worst-case scenario that all the land hatched on the Work Plans for Work 2 will be occupied by batteries and their infrastructure? That would on one level be absurd, but on another, if there is an unlimited number of batteries permitted across that whole area, then that it what the Rochdale envelope requires to be assessed.	Information relating to the number of BESS Units and balance of systems infrastructure has been provided in the Application documents. The **Design Principles (Doc Ref. 7.5(A))** states the following (page 2): ▪ There will be up to 32 Inverter Station locations. ▪ BESS Units will be co-located with the Inverter Stations, with up to four Units at an Inverter Station. Therefore it is not the case that there can be an unlimited number of BESS Units, contrary to the Interested Party's suggestion. The maximum number of BESS Units broadly corresponds to the grid connection agreement capacity, with some flexibility. As set out in the responses to paragraphs 10 and 12 above, these parameters define the maximum extent of the Project which has been assessed in the Environmental Statement, and which cannot be exceeded when the Project is constructed. This is secured through Requirement 4 (Detailed design approval) of Schedule 2 to the **Draft DCO (Doc Ref. 3.1(B))**, which is the legal mechanism through which the Rochdale Envelope is secured.
15. Thirdly, reiterating the point at para.11 above, it is no[t] good enough for the Applicant in respect of the battery element of the scheme to	Please refer to the response to paragraphs 11 and 14 above, which explain that information about the BESS Units has been included in the Application documents and that parameters for their size, number and siting are appropriately secured in the **Draft DCO (Doc Ref. 3.1(B))**.

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simply say that "the design and number of BESS Units will depend on the battery technology selected" – the Applicant should be providing the acceptable parameters, informed by the range of technology available, for the number, form, size, and location of these "units" to enable a meaningful assessment of their impacts. At the moment, the dDCO would grant consent for a limitless and vague form of development.	This information has been used to inform the assessments set out in the Environmental Statement. The Applicant is confident that a meaningful and sufficient assessment of the effects of the Project has been undertaken, in accordance with applicable legislation and guidance.
Associated Development	
16. The Applicant should provide further details justification as to the size and nature of Work 2, the battery component, and how Work 2 qualifies as "associated development" (see Explanatory Memorandum para. 1.2.10) within the meaning of the Act.	The Applicant considers that all works defined as Work Nos. 2 to 8 and the Site Wide Works in Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))** constitute associated development, consistent with the principles set out in the Associated Development Guidance[1], as set out and explained in Table 4 (on pages 18-19) of the **Planning Statement (Doc Ref. 7.6)** [APP-151]. As set out there, the BESS enables the storage of electricity generated prior to export to the electricity grid. To do so, the BESS is charged directly from the PV panels. The inclusion of BESS allows the Project to maximise how much energy it can export to the grid, which is particularly relevant to a solar scheme given the inherently intermittent form of energy generation which solar generation provides. This approach maximises the efficient use of limited grid connection capacity. It means that the BESS is closely associated to the principal development and supports its operation, in accordance with the Associated Development Guidance. As a further benefit, the use of BESS will allow the Project to provide support to the local electricity grid via grid balancing services. National policy expressly recognises that battery storage development is capable of being associated development for a solar generation scheme. National policy also provides clear support for such co-

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

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	location and recognises the benefits of co-location. National Policy Statement for Renewable Energy Infrastructure (January 2024) ('NPS EN-3') provides that: *"2.10.10 … [The British Energy Security Strategy] … sets out that government is supportive of solar that is "co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use"."* *"2.10.16 Associated infrastructure may also be proposed and may be treated, on a case by case basis, as associated development, such as energy storage …"* *"2.10.32 Where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions (for example, onshore wind generation, storage, hydrogen electrolysers) to maximise the efficiency of land use."* The Overarching National Policy Statement for Energy (January 2024) ('NPS EN-1') provides: *"3.3.6 Storage and interconnection can provide flexibility, meaning that less of the output of plant is wasted as it can either be stored or exported when there is excess production. They can also supply electricity when domestic demand is higher than generation, supporting security of supply. This means that the total amount of generating plant capacity required to meet peak demand is reduced, bringing significant system savings alongside demand side response (up to £12bn per year by 2050). Storage can also reduce the need for new network infrastructure."* *"3.3.27 Storage can provide various services, locally and nationally. These include maximising the usable output from intermittent low carbon generation (e.g. solar and wind), reducing the total amount of generation capacity needed on the system; providing a range of balancing services to the NTESO and Distribution Network Operators (DNOs) to help operate the system; and reducing constraints on the network, helping to defer or avoid the need for costly network upgrades as demand increases".* Co-location is well established in the industry and a number of recent Secretary of State solar DCO decisions have recognised that BESS is capable of qualifying as associated development, for example: ▪ The Cottam Solar Project Order 2024 (Work No. 2 and 3);

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	▪ The Longfield Solar Farm Order 2023 (Work No. 2).
17. The Government Guidance on this question makes clear that : a. “Associated development should therefore either support the construction or operation of the principal development, or help address its impacts” and b. “Associated development should not be an aim in itself but should be subordinate to the principal development.”	As noted in the response to paragraph 16, the Applicant is confident that all of the works defined as Work Nos. 2 to 8 and the Site Wide Works in Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))** are appropriately regarded as "associated development" in accordance with the applicable Guidance.
18. Those that instruct me separately have doubts about the purpose of and the extent to which the battery element is in fact supportive of and subordinate to the solar array element, or whether it is in effect a co-located development with effectively a separate operation. The Statement of Reasons at para. 3.3.8 explains that the battery storage system can store and release energy “generated from the PV panels or imported from the National Grid”. A more detailed justification (and indeed, in the Explanatory Memorandum, any justification) for including this as associated	A detailed explanation of why the Applicant considers Work Nos. 2 to 8 to be "associated development" is set out within Table 4 of the **Planning Statement (Doc Ref. 7.6)** [APP-151], as further detailed in response to paragraph 16 above. The BESS is subordinate in function to the PV panels as indicated in response to paragraphs 14 and 16 above, and also in its scale and extent as limited by the **Design Principles (Doc Ref. 7.5(A))** and illustratively shown on the **Illustrative Project Drawings – Not for Approval (Doc Ref. 2.6(A))**.

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development to the solar array should be provided by the Applicant.	
Definition of "commencement" and "enabling works"	
19. The requirements (Schedule 2) in general prevent the "commencement" of the development until the requirement is fulfilled. The interpretation section of the dDCO (article 2) defines "commencement" as excluding "enabling works". This is in general an acceptable approach, but the Government Guidance on this explains that: "The definition of commencement must not provide for preliminary works which are so extensive that they would be likely to have significant environmental effects themselves, and would normally need consideration and approval by the discharging authority prior to such works starting. Typical examples of matters which are not acceptable preliminary works include major earthworks, clearance of trees and ground clearing, activities affecting protected species or archaeological remains, unless appropriate controls are secured in another manner."	The **Draft DCO (Doc Ref. 3.1(B))** defines *"commence"* in Article 2(1) to mean *"carry out any material operation, as defined in section 155 of the 2008 Act, forming part of the authorised development other than site enabling works".* **The Draft DCO (Doc Ref. 3.1(B))** goes on to define *"site enabling works"* within the same article as a list of activities which includes at sub-paragraph (d) *"demolition work"*. This is explained in paragraph 2.3.2 of the **Explanatory Memorandum (Doc Ref. 3.3(B))**, which states: *"The effect of the definition is that the site enabling works can be carried out prior to the requirements contained in Schedule 2 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective."* This approach has clear precedent in other solar DCOs. For example, the definition of *"commence"* in both the Cleve Hill Solar Park Order 2020 and the Little Crow Solar Park Order 2022 excluded *"site preparation works"* which comprised (amongst other things) *"demolition works".* Article 2(1) does not, in itself, grant powers to carry out development. Rather it governs what can be carried out prior to discharging the Schedule 2 requirements to allow works to take place early in the construction programme following the making of the Order. The Environmental Statement has not identified any likely significant adverse effects as a result of such site enabling works that would need to be controlled through the discharge of requirements process. Nevertheless, as the Applicant does not intend to carry out any demolition works at the site enabling stage, it has deleted sub-paragraph (d) from the site enabling works definition.

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20. The definition of “enabling works” in the dDCO includes “demolition”. It is plain that demolition works can themselves create noise, dust, and transport movements, the sorts of impacts that require to be controlled by the schemes approved under Requirements 6 and 7.	
Definition of “maintain”	
21. The definition within Article 2 of “maintain” appears to be couched particularly widely, to include the ability to “remove, reconstruct and replace” elements of the development. The Applicant should provide further justification as to why these broader provisions are required, in particular a standalone power to “remove” elements of the development.	The **Draft DCO (Doc Ref. 3.1(B))** defines *"maintain"* in Article 2(1) to include *"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".* The **Explanatory Memorandum (Doc Ref. 3.3(B))** at paragraph 2.3.2 explains that *"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."* 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.

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	The approach taken in Article 2(1) is clearly established in precedent, including The Little Crow Solar Park Order 2022[1] (Article 2(1)) and The Cleve Hill Solar Park Order 2020 (Article 2(1)).
Article 8(7): disapplication of legislative provisions	
22. Article 8(7) provides that "any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order". The "adjoining" and "common boundary" elements of this provision make it an incredibly broad provision which effectively extends the scope of the Order beyond the Order limits to a whole range of land to which it does not and ought not apply (which is not mapped anywhere but could extend to a significant amount of land), and to the entire panoply of statute law! There is no meaningful justification of this provision, what sort of legal provisions it is supposed to capture, and what sort of problem it is supposed to address. Such a general provision is offensive to [sic]	Article 8(7) of the **Draft DCO (Doc Ref. 3.1(B))** states that *"Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order."* The **Explanatory Memorandum (Doc Ref. 3.3(B))** at paragraph 3.6.8 explains that *"Article 8(7) provides that any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of the Order. The Applicant considers that, in the context of the Project being of national significance, the Order should be the predominant authorising instrument for the works."* Article 8(7) does not have the effect of authorising development outside of the Order Limits. Instead, this provision has been included and is necessary in order to ensure there are no enactments of a local or other nature that would hinder the construction, operation and decommissioning of the authorised development. It ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. As a result, the construction, operation and decommissioning of the authorised development are not jeopardised by any incompatible statutory provisions which might exist. The Applicant has undertaken a proportionate search of existing enactments, including private Acts of Parliament and byelaws, which apply to land within or in close proximity to the Order Limits and those which have been identified are listed in Schedule 3 to the Order and disapplied pursuant to Article 8(1). However, no search can be completely exhaustive and there remains the possibility that an enactment or provision may have been overlooked. Article 8(7) has been included to address this issue, ensuring that the delivery of the Project to meet the identified urgent need for renewable energy is not comprised by unknown enactments despite the Applicant's best efforts to identify those enactments in advance of submitting the DCO application. There is precedent for such a provision, for example The Great Yarmouth Third River Crossing Development Consent Order 2020 (see Article 4(2))[2] and The Manston Airport Development Consent Order 2022 (see Article 3(2))[3].

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Article 9: Hillside	
23. This article is said to address the implications of the decision of the Supreme Court in Hillside v Snowdonia National Park Authority [2022] UKSC 30] relating to overlapping planning permissions. This article is novel, and is said to be justified by the novel scenario created by Hillside. It is important to note however that the Supreme Court in Hillside did not in fact assert any new principle of law, but rather approved the longstanding principles in Pilkington v Secretary of State for the Environment [1973] 1 WLR 1527. The fact that the Applicant can cite no precedent for such a clause is important – it cannot identify what the problem is that it seeks to address by this article, nor that such a problem has been identified and deal with similarly in similar scenarios in the past two years since the Hillside judgment. 24. This provision seems to be a solution in search of a problem. It appears to me that it is not desirable that, should the development permitted by a DCO be physically incapable of being achieved, the	The **Explanatory Memorandum (Doc Ref. 3.3(B))** explains that there is potential uncertainty following the Court's decision in in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30 (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. 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: a) The draft DCO for the Lower Thames Crossing project[4], which is currently in the Decision stage, includes bespoke drafting in Article 56 to address the Hillside uncertainty. Article 56(4) states: *"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."* b) The draft DCO for the London Luton Airport Expansion project[5], which is currently in the Decision stage, includes similar drafting targeted at the Hillside uncertainty in Article 45(4) which states: *"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 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."* c) The draft DCO for the Gatwick Airport Northern Runway Project[6], which is currently in the Decision stage, includes drafting that is similar to that **in the Draft DCO (Doc Ref. 3.1(B))** for

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DCO continues to authorise that development. The public benefits that justify the scheme of development need to be secured by the dDCO – if they are not secured, then the justification for granting the DCO in the first place is frustrated. Thus if the scheme permitted by the DCO is physically impossible to achieve, then it could be right as a matter of principle that the Pilkington principle should apply. 25. However, (i) there is no authority to suggest that the Pilkington principles does in fact apply to consent granted by DCO; and (ii) if the Rochdale envelope approach is properly pursued, it allows a degree of "flexibility" (the Applicant's word), with detailed design to be determined under Requirement 4. There is no obstacle in the dDCO as it stands to the Applicant submitting different schemes for the design of the project under Requirement 4 if it subsequently becomes apparent that the design previously approved needs to be adapted to reflect changes in the planning position. 26. To the extent that this article appears to allow the Applicant to potentially retain the benefit of the	Stonestreet Green Solar. Article 9(2) states: *"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."* 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.

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proposed DCO whilst obtaining planning permissions for different or further uses on within the Order limits which would not be considered through this (rigorous) process and which could affect the physical possibility of the DCO development being built it, it should be strongly resisted.	

References

[1]Legislation.gov.uk. (2022). The Little Crow Solar Park Order 2022. [online] https://www.legislation.gov.uk/uksi/2022/436 [Accessed 5 Dec. 2024]

[2] Legislation.gov.uk. (2020). *The Great Yarmouth Third River Crossing Development Consent Order 2020.* [online] https://www.legislation.gov.uk/uksi/2020/1075/article/4 [Accessed 5 Dec. 2024]

[3] Legislation.gov.uk. (2022). *The Manston Airport Development Consent Order 2022.* [online] https://www.legislation.gov.uk/uksi/2022/922 [Accessed 5 Dec. 2024]

[4] National Highways. (2022). *Lower Thames Crossing Draft Development Consent Order.* [online] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-001247-3.1%20Draft%20Development%20Consent%20Order.pdf [Accessed 5 Dec. 2024]

[5] London Luton Airport Limited. (2024). *London Luton Airport Expansion Draft Development Consent Order.* [online] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020001/TR020001-003477-2.01%20Draft%20Development%20Consent%20Order.pdf [Accessed 5 Dec. 2024]

[6] Gatwick Airport Limited. (2023). *Gatwick Airport Northern Runway Project Draft Development Consent Order.* [online] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020005/TR020005-000796-2.1%20Draft%20Development%20Consent%20Order.pdf [Accessed 5 Dec. 2024]