
EAST YORKSHIRE SOLAR FARM

East Yorkshire Solar Farm
EN010143

The Applicant's Closing Submissions
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1. Introduction

1.1 Purpose of this document

- 1.1.1 These Closing Submissions have been produced by East Yorkshire Solar Farm Limited (the Applicant) to summarise in one place the Applicant's submissions on any outstanding matters raised in submissions during the course of the Examination of the proposed Development Consent Order (DCO) Application (the Application) for the East Yorkshire Solar Farm (the Scheme). It is provided to ensure that the Examining Authority, and ultimately the Secretary of State for Energy Security and Net Zero (Secretary of State), is clear on the Applicant's position in relation to these matters. It has been produced early, at Deadline 6 of the Examination, given the limited nature of the outstanding matters remaining for the Examination.
- 1.1.2 The Applicant remains strongly of the view that the Examination of the Application can and should be concluded prior to the end of the six-month Examination period as explained in the Applicant's covering letter for its submission between Deadline 5 and Deadline 6 **[AS-026]**. The Scheme is critical national priority infrastructure, and there is an urgent need for the deployment of renewable energy infrastructure, as supported in Government policy.
- 1.1.3 The Applicant has resolved all substantive issues in Examination, leaving none remaining to be examined, as evidenced by its recent submissions and these Closing Submissions. This is reflected by the lack of submissions at recent Examination deadlines.
- 1.1.4 These Closing Submissions do not make new points but instead draw on, and refer to, submissions made by the Applicant in its Application and throughout the course of the Examination. The Applicant notes that the Guide to the Application, submitted at Deadline 6 of the Examination (Revision 07), lists each of the Application documents and also provides a breakdown of all submissions made by the Applicant during the Examination. It is submitted to assist all Interested Parties and to aid the Examining Authority and the Secretary of State in the reporting and decision-making process.
- 1.1.5 In doing so, this document re-states the Scheme's compliance with relevant policy, legislation and guidance, the need and benefits of the Scheme, and points the Examining Authority and the Secretary of State to the evidence which is considered important or relevant to the application of section 105 of the Planning Act 2008 (PA 2008).
- 1.1.6 Section 1.5 of these Closing Submissions also provides details of the status of the Applicant's negotiations with relevant statutory undertakers at the end of Examination, and in the very limited cases where agreement has not been finalised, provides the Applicant's case pursuant to section 127 and section 138 of the PA 2008. Section 1.5 also provides an update on the Applicant's negotiations with the Crown Estate regarding its consent to be given under section 135 of the PA 2008.
- 1.1.7 At section 1.7, the Applicant has taken the opportunity to respond to relevant submissions received at Deadline 5.

- 1.1.8 Although this document is the Applicant's Closing Submissions, the Applicant notes that in the Examination timetable, set out in Annex A of the Rule 8 letter **[PD-003]**, a Report on the Implications for European Sites (RIES) would be published on 15 October if the Examining Authority considers this report is required. As stated in the Applicant's covering letter for its submission between Deadline 5 and Deadline 6 **[AS-026]** the Applicant does not consider the RIES is required, because this is unlikely to elicit any further substantive comment from statutory consultees, who have all made their respective positions clear and complete. If the Examining Authority decides to publish the RIES, the Applicant encourages the Examining Authority to do so as swiftly as possible, noting that Natural England, as the statutory nature conservation body, has already provided its final position between Deadline 5 and Deadline 6. If a RIES is published, the Applicant requests that comments are sought within a proportionate timescale and no later than two weeks from publication of the RIES. The Applicant considers it unnecessary and disproportionate to wait until Deadline 7, as currently provided for in the Examination timetable. The Applicant would provide its response within the same timescale i.e. prior to Deadline 7.
- 1.1.9 The Applicant wishes to make clear that an early close of Examination would have substantial public benefit in facilitating an earlier recommendation report and decision on the DCO Application in advance of the Contracts for Difference (CfD) Auction Round which the Applicant anticipates will be held in mid-April 2025. If consent is granted in Q1 2025, this would enable the Scheme to participate in the CfD process and facilitate greater competition within the auction, which in turn would facilitate the timely delivery of the substantial renewable energy generation capacity and critical national priority infrastructure which the Scheme will deliver. The need for all this to be undertaken expeditiously is set out in the National Policy Statements for Energy (January 2024) and other policy announcements made by the Secretary of State for Energy Security & Net Zero since he took office in July 2024.
- 1.1.10 As such, the Applicant strongly encourages the Examining Authority to utilise the authority he has pursuant to section 87(1) of the Planning Act 2008 to decide that the maximum six-month period under section 98(1) of that Act is not required for this Application.

1.2 The Scheme

- 1.2.1 The Scheme comprises the construction, operation (including maintenance) and decommissioning of a solar photovoltaic (PV) electricity generating facility with a total capacity exceeding 50 megawatts (MW) and export connection to the National Electricity Transmission System (NETS), at National Grid's Drax Substation. A detailed description of the Scheme is included in Chapter 2: The Scheme, Environmental Statement Volume 1 which was submitted with the Application **[APP-054]** and a description of the development to be authorised is set out in Schedule 1 of the draft DCO **[AS-032]**.
- 1.2.2 The Scheme constitutes a Nationally Significant Infrastructure Project (NSIP) as it is an onshore generating station in England with a capacity over 50 MW, and therefore requires an application for a DCO to be submitted to the Planning Inspectorate for determination by the Secretary of State. The

Application for East Yorkshire Solar Farm was submitted on 21 November 2023 and accepted for Examination on 19 December 2023. Examination of the Application commenced on 21 May 2024.

1.3 National Policy Statements for Energy

- 1.3.1 In November 2023, updated versions of Overarching National Policy Statement for Energy (NPS EN-1) (Ref. 1), the National Policy Statement for Renewable Energy (NPS EN-3) (Ref. 3) and National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (Ref. 4) were released and subsequently designated in Parliament on 17 January 2024. This updated suite of National Policy Statements (NPSs) for Energy replaced the versions designated in 2011, subject to transitional arrangements.
- 1.3.2 The Applicant notes that paragraph 1.6.3 of NPS EN-1 (Ref. 1) states that the latest amendments to the suite of National Policy Statements for Energy have effect for DCO applications accepted for examination after the designation of the amendments, which was 17 January 2024. Paragraph 1.6.2 states *'that for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS'*. Solar technology was not included within the 2011 NPSs because at the time this policy was designated solar was not proven at scale.
- 1.3.3 As the Application was accepted for examination on 19 December 2023, it still therefore remains that the Application is to be determined in accordance with Section 105 of the PA 2008 (Ref. 1). Paragraph 1.6.3 of NPS EN-1 (Ref. 1) does, however, acknowledge that the updated suite of energy NPSs are capable of being important and relevant considerations in the decision making process for those applications where the NPSs do not have effect (and therefore section 104 of the PA 2008 (Ref. 1) does not apply) such as the Application. In section 2 of the Planning Statement **[APP-232]** the Applicant discusses the status of the NPSs in the decision making process and at paragraph 2.2.18 the Applicant considers the relevant policies of the updated suite of energy NPSs to be important and relevant considerations and have significant weight in the decision making process given that they reflect and take account of the Government's latest renewable energy policy. Despite the designation of the 2024 NPSs for Energy, the 2011 NPS EN-1 (Ref. 6) and 2011 NPS EN-5 (Ref. 7) also remain important and relevant considerations for the Secretary of State in its decision making process as demonstrated by the recent decisions for the Sunnica, Gate Burton, Mallard Pass and Cottam DCOs.
- 1.3.4 Appendix A of The Responses to the Examining Authority's Written Questions for Deadline 1 **[REP1-081]** presents the Applicant's review of the 2024 NPSs for Energy and the Scheme's accordance with the relevant policies, which includes policies within NPS EN-1, NPS EN-3 and NPS EN-5. Appendix A of the Planning Statement **[APP-233]** also presents the Scheme's accordance with the 2011 NPS EN-1 and NPS EN-5.
- 1.3.5 NPS EN-1 (Ref. 2) sets out the need for nationally significant energy infrastructure to deliver the Government's targets for the decarbonisation of energy generation, increase the affordability of energy and provide energy security and now includes solar generation, which the previous 2011 designated suite of energy NPS policy did not specify. NPS EN-3 (Ref. 3)

- also includes specific policies relating to the development of large scale ground mounted solar photovoltaic energy projects such as the Scheme. NPS EN-3 (Ref. 3) at paragraph 2.10.9 states that the Government has committed to *“sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions by 2050. As such, solar is a key part of the government’s strategy for low-cost decarbonisation of the energy sector”* and paragraph 2.10.10 explains that the Government *“expects a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW)”*.
- 1.3.6 Paragraphs 3.2.6 to 3.2.8 of NPS EN-1 (Ref. 2) are set out in bold within NPS EN-1 and explain that applications for development of the type of infrastructure set out in the NPS, therefore including solar, should be assessed on the basis that the Government *“has demonstrated that there is a need for those types of infrastructure which is urgent”* and that *“substantial weight should be given to this need when considering applications”*. Furthermore, *“the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS.”*
- 1.3.7 NPS EN-1 (Ref. 2) also introduces the classification of infrastructure that is *“Critical National Priority (CNP)”*. NPS EN-1 section 4.2 explains that the Government has concluded that there is a CNP to provide nationally significant low carbon infrastructure. Section 4.2 of NPS EN-1 specifies which energy technologies are considered to be low carbon and therefore CNP; this includes all onshore and offshore generation that does not involve fossil fuel combustion. A solar generating station is classified as CNP and the Scheme is therefore CNP infrastructure.
- 1.3.8 Paragraph 4.2.16 of NPS EN-1 (Ref. 2) explains that CNP infrastructure is to be treated as if it has met any tests which are set out within the NPS or any other planning policy, which requires a clear outweighing of the harm, exceptionality or very special circumstances, as the starting point for the Secretary of States decision making.
- 1.3.9 Paragraph 3.3.63 of NPS-EN-1 (Ref. 2) also states that the CNP for low carbon infrastructure will *“in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy.”* This confirms that with respect to this policy test, that the bar is high, where the impacts of a CNP infrastructure scheme would be required to outweigh need and benefits overall in order for consent to be refused.
- 1.3.10 Paragraph 4.1.3 of NPS EN-1 (Ref. 2) specifies the presumption in favour of granting consent to applications for energy NSIPs that are identified as CNP infrastructure, due to the level and urgency of need for such infrastructure, *“unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused”*. Paragraph 4.1.7 of NPS EN-1 also adds that: *“For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases.”*
- 1.3.11 The Applicant considers that these changes to NPS EN-1 (Ref. 2) and NPS EN-3 (Ref. 2) further strengthen the need case for, and the urgency to deliver, the Scheme,

1.3.12 Furthermore, the environmental impacts of the Scheme, which have been assessed as reported in the Applicant's Environmental Statement and discussed in the Planning Statement **[APP-232]** demonstrate that overall, with the mitigation hierarchy being followed, and the mechanisms to secure this mitigation being implemented through the proposed Requirements of the draft DCO **[AS-040]**, the Scheme will have limited and localised residual significant adverse effects during its 40 year operation. These limited and localised effects are outweighed by the significant national benefits that the Scheme will provide, as supported by the general presumption in favour of granting consent for CNP infrastructure set out in NPS EN-1 discussed above.

1.4 Need and Benefits of the Scheme

- 1.4.1 There is an urgent global need to generate energy using renewable and low carbon sources to provide sufficient, reliable and affordable sources of electricity, whilst meeting national climate change and carbon reduction targets and budgets.
- 1.4.2 The Government expects large scale solar generation to make an important contribution to achieving its decarbonisation requirements and climate change targets, as well as its objectives for the UK's power system, which includes ensuring the supply of energy remains secure, reliable and affordable.
- 1.4.3 A detailed review of why the Scheme is urgently required at the scale and location proposed is set out in the Statement of Need **[REP5-015]**, which also explains how the Scheme addresses relevant aspects of established and emerging government energy and climate change policy and commitments.
- 1.4.4 Powering Up Britain (March 2023) (Ref. 5) presents the Government's most up to date strategy for the energy sector, stating the Government's ambition to increase solar five-fold by 2035, with a target of 70 Gigawatt (GW) of solar to be operational in the UK by 2035. The Statement of Need **[REP5-015]** states that to achieve the Government's target, approximately one solar scheme of a scale similar to the Scheme will need to be switched on each and every month between now and 2035.
- 1.4.5 As set out in section 1.3 above, NPS EN-1 designated in 2024 introduces the classification of infrastructure that is "*Critical National Priority (CNP)*" (Ref. 2) and the Scheme is therefore CNP infrastructure. Paragraph 4.1.3 of NPS EN-1 specifies the presumption in favour of granting consent to applications for energy NSIPs that are identified as CNP infrastructure, due to the level and urgency of need for such infrastructure, "*unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused*".
- 1.4.6 Without a rapid increase in low-carbon supply, decarbonisation of the energy sector, and other sectors is unlikely to occur. The Statement of Need **[REP5-015]** aligns with NPS EN-1 and concludes that many low carbon generating technologies are urgently needed to meet the Government's energy objectives, which include:
- a. Providing security of supply.
 - b. Providing an affordable, reliable system.

- c. Ensuring the system is Net Zero consistent.
- 1.4.7 The Statement of Need **[REP5-015]** concludes that in order to meet these objectives, the evidence therefore points to the development of proven technologies such as large scale solar as necessary, and states that such schemes should be brought forwards with urgency to make tangible and essential advances in decarbonisation in the near term.
- 1.4.8 The Statement of Need **[REP5-015]** states that the Scheme, if approved, would contribute to an adequate and dependable UK energy generation mix, through enabling the generation of more low-carbon power from indigenous and renewable resources. Therefore, the approval, construction and operation of the Scheme will make a significant contribution to the UK's energy security needs, and the decarbonisation needs of the UK.
- 1.4.9 Furthermore, the Statement of Need **[REP5-015]** sets out that the Scheme will be a substantial infrastructure asset, which if consented will deliver large amounts of low-cost, secure and low-carbon electricity both during and beyond the critical 2020s timeframe. Maximising the capacity of generation in the resource-rich, well-connected and technically deliverable proposed location for the Scheme, represents a significant and economically rational step forwards in the fight against the global climate emergency.
- 1.4.10 In summary and as set out in the Statement of Need **[REP5-015]**, the Scheme is a leading UK large-scale solar development. If consented, it would be an essential component of the UK's plan to deliver a future of efficient decarbonisation through the deployment of large-scale, technologically and geographically diverse low-carbon generation schemes. The Scheme addresses all important and relevant aspects of existing and emerging government policy.
- 1.4.11 As identified in national policy and the Government's strategy there is an urgent need to bring forward large scale solar development in order to meet targets for decarbonisation and net zero. The Scheme will deliver these policy aims, providing a significant amount of low carbon electricity over its 40 year lifetime; and providing resilience, security and affordability of electricity supplies due to its large scale. It will therefore be a critical part of the national portfolio of renewable energy generation that is required to decarbonise its energy supply quickly.
- 1.4.12 The Scheme will also deliver other more localised local economic, social and environmental benefits. These include substantial biodiversity net gain; improvements to soil quality; improvements to the existing PRow network through the provision of permissive paths; and significant employment generation during construction. These are set out in further detail in section 5 of the Planning Statement **[APP-233]**.
- 1.4.13 In summary, the Scheme will provide CNP infrastructure where the need is already established and for which the presumption in favour of granting development consent is engaged. In accordance with NPS EN-1, which is considered by the Applicant to be an important and relevant matter of significant weight to the Secretary of State's decision making as shown through recent decisions for other solar DCOs, substantial weight should be given to the need for the Scheme, and its status as CNP infrastructure which weighs heavily in favour of consent being granted.

1.5 Statutory Undertaker Updates

- 1.5.1 Interests in the land encompassed by the DCO which are held by each statutory undertaker are identified in the Book of Reference **[REP4-004]**. The Applicant has engaged with these statutory undertakers to ensure the Scheme can be developed without serious detriment to any statutory undertaking, including the provision of the protective provisions within Schedule 14 to the draft DCO, the vast majority of which are in final agreed form. Table 3 of the Schedule of Negotiations and Powers Sought, the latest version of which will be submitted at Deadline 6 of the Examination, includes the final position on the status of negotiations with statutory undertakers.
- 1.5.2 The Applicant has included protective provisions in the final draft DCO, which will be submitted at Deadline 6 of the Examination, for the benefit of the statutory undertakers (see Article 43 and Schedule 14). The Applicant has successfully agreed final protective provisions with all statutory undertakers, where required, save for the following outstanding points:
- a. **National Gas Transmission Plc** – The Applicant and National Gas Transmission Plc have substantively agreed the form of protective provisions included at Part 9 of Schedule 14 to the draft DCO at Deadline 6. There are two minor drafting points outstanding between the parties which are unable to be resolved. The provisions included at Part 9 represent the Applicant's final position and are sufficient to protect the interests of National Gas Transmission Plc to ensure there is no serious detriment to National Gas Transmission Plc's undertaking, as confirmed in Appendix A of this submission;
 - b. **The Environment Agency** – The Applicant has continued to seek to engage with the Environment Agency to obtain comments on the protective provisions offered at Part 5 of Schedule 14 to the draft DCO, however has been unable to obtain a substantive response. The Applicant has included its final proposed form of protective provisions at Deadline 6, noting these are the same form of protective provisions approved in the Gate Burton, Mallard Pass and Cottam solar DCOs and therefore found to be acceptable to protect the Environment Agency's interests. The Applicant will continue to seek to engage with the Environment Agency to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State; and
 - c. **Ouse & Humber Drainage Board** – The Ouse and Humber Drainage Board has provided an in-principle agreement to the protective provisions for the protection of drainage authorities set out in Part 3 of Schedule 14 to the draft DCO, and the terms of the relevant disapplications sought in the draft DCO. The Applicant understands the Ouse and Humber Drainage Board is finalising this position and the Applicant has continued to engage with them to seek final confirmation, but as yet that has not been forthcoming. The Applicant will continue to seek to engage with the Ouse and Humber Drainage Board to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State.
- 1.5.3 The Applicant also continues to engage with solicitors acting for the Crown Estate in relation to the Applicant's request for Crown consents pursuant to

s135(1) and (2) of the PA 2008. On 30 September 2024, the Applicant received draft s135 consent documents from the Crown Estate's solicitors which are now being reviewed. The Applicant will continue to engage with The Crown Estate to finalise the consent documents and thereafter will submit the s135 consent to the Examining Authority or, if the final consent is received following close of Examination (noting this is a common occurrence), directly to the Secretary of State. The Applicant understands that there is no reason why this consent should not be forthcoming and it is simply a matter of timing.

- 1.5.4 In light of the above and the existing protections included within the final draft DCO submitted at Deadline 6 of the Examination, the Applicant considers that the compulsory acquisition powers being sought should be granted, notwithstanding any outstanding representations. Please see the Applicant's full statement pursuant to s127 and s138 of the PA 2008 at Appendix A to these Closing Submissions.

1.6 Other Land Interests

- 1.6.1 The Schedule of Negotiations and Powers Sought has been updated to reflect the latest position with landowners and statutory undertakers. This document will be submitted at Deadline 6 of the Examination, alongside these Closing Submissions.
- 1.6.2 Notwithstanding any outstanding voluntary agreements, the Applicant has demonstrated that the land and rights being sought are required for the Scheme, and that there is a compelling case in the public interest for compulsory acquisition powers to be granted. All statutory and policy tests for the inclusion of compulsory acquisition powers in the DCO have been met.

1.7 The Applicant's Final Position on Points Raised in Deadline 5 Submissions

- 1.7.1 A total of 26 submissions were submitted to the Examination at Deadline 5. 22 of these were from the Applicant, with 4 being from Interested Parties. To avoid repetition, the Applicant has not responded to comments that make points that have not been addressed previously, within the Applicant's Responses to Relevant Representations [REP1-066], the Applicant's Responses to the Examining Authority's Written Questions for Deadline 1 [REP1-081] and the Applicant's Responses to Examining Authority's Second Written Questions [REP4-030]. Therefore, the Applicant is only responding to the submission received by Mr Field [REP5-025] as set out below in Table 1.

Table 1 Applicant's Responses to Submissions Received at Deadline 5 [REP5-025]

| Mr Field Comment | Applicant's Response |
|---|--|
| Yes, Mr Field does assume that the panels will be horizontal when the sun is at 59°. Single [1] axis tracker (SAT) panels are tilted fully to the east in the early morning, then rotate throughout | Both single axis trackers and dual axis trackers include light meters and track the position of the sun. The Scheme will utilise single axis trackers which turn on one axis, as Mr Field acknowledges. Dual |

Mr Field Comment

Applicant's Response

the day to reach fully west tilt in the late evening. At approximately midday on every day of the year the panels will be horizontal, whether the sun is at a maximum elevation of 59° (summer solstice) or 12° (winter solstice) or for any day in between. Light meters can do nothing to overcome the geometry of a fixed north-south axis.

The Applicant has mistakenly described dual-axis trackers, which can indeed be orientated in almost any direction. These use light meters to ensure that the panels are orientated at an optimum angle to maximise the energy generation. Dual-axis tracker panels, by their nature, track the position of the sun to harness as much energy as possible by angling the modules at their optimum position. Single-axis trackers cannot behave like this. They are horizontal at midday.

Furthermore, the Applicant dismisses the conventional understanding of peak AC power. An examination of PV power profiles (available on various websites) should dispel the curious belief that for this (or indeed any) solar scheme, a maximum 400MW alternating current would be exported at any point in time [in subsequent paragraphs]. It should be beyond dispute that peak AC power occurs only in the middle of summer, near midday, with no cloud cover – not at any point in time. This conflict with basic electrical principles is highly concerning. These are not the technical contributions that one would expect from an experienced solar engineer.

On a related matter, we continue to wait for an explanation as to why East Yorkshire is best served by SAT, while

axis trackers were not described by the Applicant in previous deadlines but, as suggested, would benefit from turning on two axes. The panels may be horizontal in the middle of the day; the Applicant did not refute this, but noted that they would be in the best position to maximise the absorption of the sunlight. This aligns with previous correspondence and does not change any information given previously.

Mr Field is describing the dc generating peak hour, rather than the peak ac export. The solar panels and inverters would cap the ac export to 400MW; this cannot be exceeded under the Applicant's export grid agreement with National Grid.

The Scheme is designed to achieve 400MW ac for several hours in the year to maximise the renewable generation on the site, rather than just the peak generating hour that Mr Field is describing. During these times, to ensure adherence with the grid connection agreement, any surplus dc generation would be capped by the inverters, which 'burn off' the surplus energy. This design principle is common practice and applies across ground mounted and roof mounted solar installations.

Single axis trackers are increasingly popular with solar farm developers in the UK following a reduction in their cost (and their good return on renewable energy), however they do not outperform single

Mr Field Comment

Applicant's Response

BOOM's neighbouring Fenwick proposal will be best served by FSF.

axis tracker panels for all sites. Single axis tracker panels are best applied in large, open fields which are rectangular or square in shape (i.e. with fewer curved field boundaries). Smaller fields, and those with curved field boundaries can be better suited to fixed south facing panels, which can be installed closer to field boundaries and at a higher density (more panels per acre), offsetting the greater MWhr generation per panel associated with single axis trackers.

PVsyst modelling was used for both the East Yorkshire Solar Farm and the Fenwick Solar Farm to test the optimal layout and type of panels. Based on the output of this modelling, single axis tracker panels are proposed for the Fenwick Solar Farm.

1.8 Applicant's response to Statkraft's press release of its proposed Mylen Leah solar NSIP

- 1.8.1 On 30 September, developer Statkraft published a press release regarding its plans for a ground mounted solar development called the Mylen Leah scheme. The Mylen Leah scheme is approximately 1.8 km north of the Order limits at its closest point. The Mylen Leah scheme constitutes a NSIP as it is an onshore generating station in England with a capacity over 50 MW, and therefore requires an application for a DCO to be submitted to the Planning Inspectorate for determination by the Secretary of State.
- 1.8.2 Given the proximity of the Mylen Leah scheme to the Applicant's Scheme, the Applicant has reviewed this scheme against its cumulative effects assessment (CEA) methodology, explained in ES Chapter 5 EIA Methodology, ES Volume 1 [APP-057]. Paragraph 5.8.14 specifies the categories of other developments which would be considered for inclusion in generating a long list of other development for the CEA. This includes development under construction; development approved and not yet implemented or submitted development applications and development allocations. Sub criteria are specified in paragraph 5.8.14 to determine the other developments which would be identified under these categories. This sub criteria includes "Development listed on the National Infrastructure Planning Programme of Projects within 5 km of the Order limits" and "other applications for Environmental Impact Assessment (EIA) development within 5 km of the Order limits, including applications for EIA screening and scoping opinions". Whilst Mylen Leah is a development scheme within 5km of the Order limits listed on the National Infrastructure Planning Programme of Projects it is not yet a submitted application and has not yet requested EIA

screening or scoping decisions from the Planning Inspectorate. Sparse information is therefore available in the public domain, meaning limited analysis can be carried out at this stage on cumulative effects.

- 1.8.3 From a review of the indicative concept masterplan on Statkraft's website, the Applicant notes that Statkraft is investigating using land in the southern area of its proposals for ecological enhancement rather than solar PV. The Applicant has measured the distance between the proposed Mylen Leah solar PV area and the Solar PV Areas for the Scheme and this is approximately 2.6km at their closest points. The Applicant also notes that a strategic highway, the A163 also runs east to west between the two schemes. Should the construction periods overlap, the traffic would therefore use different routes from the A163 to each site, avoiding significant cumulative effects. Other impacts considered in the East Yorkshire Solar Farm ES are more localised, with many impacts occurring onsite or within the immediate surrounds, and therefore without any potential to interact with impacts associated with Mylen Leah. Landscape and visual effects and heritage effects can cover a slightly larger zone of influence and have therefore considered impacts within a 5.2km and 3km radius, respectively in the ES; however, Chapter 10 Landscape and Visual Amenity **[AS-014]** notes that the extent of the study area varies based on the modelled Zone of Theoretical Visibility, and is "to the north approximately 1.0 km from the Solar PV Areas". This same principle would apply for assessing impacts on heritage assets in Chapter 7 Cultural Heritage **[APP-059]**. Beyond 1km to the north, effects associated with the Scheme have been concluded to be negligible, and would therefore not have the potential to lead to significant cumulative effects when considered with the Mylen Leah scheme.
- 1.8.4 As such, the Applicant considers from the information available that there is no potential for likely significant cumulative effects of the Scheme with the Mylen Leah scheme.?

1.9 Conclusions

- 1.9.1 As set out in the Application and Examination deliverables, and summarised in these Closing Submissions, there is a clear and compelling need for the Scheme which outweighs its very limited residual adverse effects. The Applicant has provided all necessary information to inform the Examining Authority's Recommendation Report and the Secretary of State's decision making.
- 1.9.2 Agreement has been reached with the vast majority of relevant statutory undertakers, and protective provisions for all relevant undertakers are included within Schedule 14 of the draft DCO. On the basis of the protections offered, the Examining Authority and the Secretary of State can be satisfied that there would be no serious detriment to any statutory undertaking and that the powers sought by the Applicant are necessary and should be granted.
- 1.9.3 The Scheme comprises critical national priority infrastructure, for which there is an urgent national need as defined and established in the NPSs for Energy which came into force in January 2024. There are no overriding or "exceptional" local impacts. On that basis, and for the reasons given throughout this document, the case has been made for: (1) the Examining Authority to recommend that the DCO for the Scheme be made; and (2) the

Secretary of State to so make it, in the form submitted by the Applicant at
Deadline 6.

2. References

- Ref. 1 H.M Government (2008). The Planning Act 2008. Available at: https://www.legislation.gov.uk/ukpga/2008/29/pdfs/ukpga_20080029_en.pdf [Accessed 26 September 2024]
- Ref. 2 Department For Energy Security and Net Zero (2024). Overarching National Policy Statement for Energy (EN-1). Available at: [EN-1 Overarching National Policy Statement for Energy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/overarching-nps-for-energy-en1-withdrawn.pdf) [Accessed 26 September 2024]
- Ref. 3 Department For Energy Security and Net Zero (2024). National Policy Statement for renewable energy infrastructure (EN-3). Available at: [National Policy Statement for renewable energy infrastructure \(EN-3\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/national-policy-statement-renewable-energy-infrastructure-en3-withdrawn.pdf) [Accessed 26 September 2024]
- Ref. 4 Department For Energy Security and Net Zero (2024). National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at: [National Policy Statement for Electricity Networks Infrastructure \(EN-5\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/national-policy-statement-electricity-networks-en5-withdrawn.pdf) [Accessed 26 September 2024]
- Ref. 5 H.M. Government (2023). Powering Up Britain. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/powering-up-britain-joint-overview.pdf [Accessed 26 September 2024]
- Ref. 6 Department of Energy and Climate Change (2011). Overarching National Policy Statement for Energy (EN-1). Available at: [1938-overarching-nps-for-energy-en1-withdrawn.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/1938-overarching-nps-for-energy-en1-withdrawn.pdf) [Accessed 26 September 2024]
- Ref. 7 Department of Energy and Climate Change (2011). National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at: [1942-national-policy-statement-electricity-networks-en5-withdrawn.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147340/1942-national-policy-statement-electricity-networks-en5-withdrawn.pdf) [Accessed 26 September 2024]

Appendix A Section 127 and Section 138 Statement

A.1 Introduction

A.1.1 The Applicant submitted the Application for the Scheme. As set out in Section 10.3 of the Statement of Reasons [APP-021], the land encompassed by the DCO includes land, rights or other interests owned by statutory undertakers.

A.2 Legislative Position

A.2.1 Section 127 (s127) of the PA 2008 applies where:

- a. the land or interest has been acquired by statutory undertakers for the purposes of their undertaking;
- b. a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and
- c. as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.

A.2.2 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:

- a. the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- b. the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.

A.2.3 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:

- a. the right can be purchased without serious detriment to the carrying on of the undertaking; or
- b. any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.

A.2.4 Section 138 (s138) of the PA 2008 applies if a DCO authorises the acquisition of land (compulsorily or by agreement) and:

- a. there subsists over the land a relevant right (defined in s138(2)); or
- b. there is on, under or over the land relevant apparatus (defined in s138(3)).

A.2.5 Section 138(4) of the PA 2008 states that an order may only include provision for the extinguishment of the relevant right, or the removal of the

relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

A.3 Deadline 6 s127 and s138 Cases

- A.3.1 The Application includes provisions authorising the compulsory acquisition of land and/or new rights over land, or affecting rights, belonging to statutory undertakers. The following representations made by statutory undertakers have not been formally withdrawn: the Environment Agency, National Gas Transmission Plc and the Ouse and Humber Drainage Board.
- A.3.2 The Applicant has continued to seek to engage with the Environment Agency to obtain comments on the protective provisions offered at Part 5 of Schedule 14 to the draft DCO however has been unable to obtain a substantive response. The Applicant has included its final proposed form of protective provisions at Deadline 6, noting these are the same form of protective provisions approved in the Gate Burton, Mallard Pass and Cottam solar DCOs and therefore found to be acceptable to protect the Environment Agency's interests. The Applicant will continue to seek to engage with the Environment Agency to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State.
- A.3.3 The Applicant and National Gas Transmission Plc have substantively agreed the form of protective provisions included at Part 9 of Schedule 14 to the draft DCO at Deadline 6. There are two minor drafting points outstanding between the parties which are unable to be resolved. The provisions included at Part 9 represent the Applicant's final position and are sufficient to protect the interests of National Gas Transmission Plc to ensure there is no serious detriment to National Gas Transmission Plc's undertaking, as confirmed in Appendix A of this submission.
- A.3.4 The Ouse and Humber Drainage Board has provided an in-principle agreement to the protective provisions for the protection of drainage authorities set out in Part 3 of Schedule 14 to the draft DCO, and the terms of the relevant disapplications sought in the draft DCO. The Applicant understands that the Ouse and Humber Drainage Board is finalising this position and the Applicant has continued to engage with them to seek final confirmation, but as yet that has not been forthcoming. The Applicant will continue to seek to engage with the Ouse and Humber Drainage Board to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State.
- A.3.5 Notwithstanding these outstanding matters, the Applicant considers that the protective provisions in their current form are sufficient to protect all statutory undertakers and to enable the Secretary of State to be satisfied there is no risk of a serious detriment to their statutory undertaking, as further expanded on below.
- A.3.6 The Applicant will continue to liaise with these statutory undertakers, however in the event that the representations are not formally withdrawn, the Applicant has set out in Table 1 below the reasons why the Applicant considers that the tests set out in s127(2) and s127(5) of the PA 2008 are satisfied. For completeness, the Applicant has also included in the table

below the position in respect of all statutory undertakers. Table 1 lists the statutory undertakers in the same order that they appear in Table 3 of the Schedule of Negotiations and Powers Sought, for ease of reference.

- A.3.7 Section 138 of the PA 2008 is engaged by Article 23 of the draft DCO. This Article will permit the undertaker to extinguish or relocate the rights or apparatus of statutory undertakers and electronic communications apparatus. Such power may only be included in the DCO if the Secretary of State is satisfied the extinguishment or removal is necessary for the authorised development.
- A.3.8 The exercise of such powers will be carried out in accordance with the protective provisions contained in Schedule 14 of the DCO which set out constraints on their exercise with a view to safeguarding the statutory undertakers' and electronic communications apparatus owners' interests. The Applicant therefore considers that the test set out s138 of the PA 2008 is satisfied.

Table 1 – Section 127 PA 2008 Tests

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|---|---|---|---|
| 2/07, 2/08, 14/73, 14/74, 8/63, 15/94, 21/142, 21/149, 22/151, 21/152, 22/154, 22/155, 22/156, 22/164, 22/165, 22/170, 22/171, 22/172 | National Grid Electricity Transmission Plc | The Applicant and National Grid Electricity Transmission Plc (NGET) have now agreed the form of protective provisions included in Part 7 of Schedule 14 of the draft DCO submitted at Deadline 6. As such, the Applicant understands NGET will write to the Examining Authority at Deadline 6 to withdraw its representations in respect of the Scheme. | Agreed protective provisions for the benefit of NGET are included in Part 7 of Schedule 14 to the draft DCO submitted at Deadline 6. |
| 15/83 | Network Rail Infrastructure Limited | Network Rail has withdrawn its objection to the Scheme [REP3-049] and therefore s127 of the PA 2008 is not triggered. | Agreed protective provisions for the benefit of Network Rail have been included in Part 6 of Schedule 14 to the draft DCO since the version submitted at Deadline 1. |
| 18/107, 18/108, 18/109, 18/110, 21/140, 21/41, 21/142 | Environment Agency | The EA has submitted representations in respect of the Application. As at Deadline 6, its objection has not been withdrawn. | The Applicant has continued to seek to engage with the EA to obtain comments on the protective provisions offered at Part 5 of Schedule 14 of the draft DCO however has been unable to obtain a substantive response. |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|----------------|---|--|--|
| | | | <p>The Applicant has included its final proposed form of protective provisions at Deadline 6, noting these are the same form of protective provisions approved in the Gate Burton, Mallard Pass and Cottam solar DCOs and therefore found to be acceptable to protect the EA's interests. The Applicant will continue to seek to engage with the EA to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State.</p> |
| 18/109, 21/141 | Canal & River Trust | <p>The Trust has withdrawn its objection to the Scheme [REP2-024] and therefore s127 of the PA 2008 is not triggered.</p> | <p>Agreed protective provisions for the benefit of the Trust have been included in Part 4 of Schedule 14 to the draft DCO since the version submitted at Deadline 1.</p> |
| 19/127 | Ouse and Derwent Internal Drainage Board | <p>The Board has withdrawn its objection to the Scheme [REP4-035] and therefore s127 of the PA 2008 is not triggered.</p> | <p>The Applicant agreed amendments to the protective provisions for the benefit of drainage authorities in Part 3 of Schedule 14 to the draft DCO with the Board, which have been</p> |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|---|---|--|---|
| | | | included since the version submitted at Deadline 1. |
| 2/06, 2/07, 4/09, 3/11, 3/12, 6/29, 7/31, 6/32, 8/65, 8/67, 15/85, 16/86, 3/10, 4/13, 11/49, 9/62, 8/63, 8/66, 14/68, 14/75, 14/77, 16/89, 15/92, 18/107, 16/88 | Ouse and Humber Drainage Board | The Board has submitted representations in respect of the Application. As at Deadline 6, its objection has not been withdrawn. | The Board has provided an in-principle agreement to the protective provisions for the protection of drainage authorities set out in Part 3 of Schedule 14 to the draft DCO, and the terms of the relevant disapplications sought in the draft DCO. The Applicant understands that the Board is finalising this position and the Applicant has continued to engage with them to seek final confirmation, but as yet that has not been forthcoming. The Applicant will continue to seek to engage with the Board to obtain its consent to disapplication required for Article 6 of the DCO, and will provide that consent directly to the Secretary of State. |
| 21/144, 21/146, 21/147, 21/149, 21/152, 22/155, 22/159, 22/163, 22/164 | Selby Area Internal Drainage Board | The Board did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered. | The Board has confirmed that, following discussions, the information provided by the Applicant regarding disapplication provisions and the standard |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|---|---|---|--|
| | | | <p>protective provisions for the benefit of drainage authorities included in Part 3 of Schedule 14 to the draft DCO are acceptable to the Board and its outstanding concerns are now all resolved.</p> |
| <p>3/10, 4/13, 4/27, 10/45, 9/54, 9/58, 13/60, 8/64, 14/68, 14/76, 14/77, 15/81, 15/83, 16/91, 15/92, 15/93, 18/96, 15/85</p> | <p>British Telecommunications Plc</p> | <p>BT did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.</p> | <p>The Applicant has attempted to engage with BT throughout the Examination but has received no response. Standard protective provisions for the benefit of telecommunications code network operators have been included in Part 2 of Schedule 14 to the draft DCO.</p> |
| <p>7/31, 11/47, 11/50, 13/69, 13/71, 15/79, 17/82, 19/129, 20/138</p> | <p>National Gas Transmission Plc</p> | <p>NGT has submitted representations in respect of the Application. As at Deadline 6, its objection has not been withdrawn.</p> | <p>The Applicant and NGT have substantively agreed the form of protective provisions included at Part 9 of Schedule 14 to the draft DCO at Deadline 6. There are two minor drafting points outstanding between the parties which are unable to be resolved. The provisions included at Part 9 represent the Applicant's final position and are sufficient to protect the interests of NGT to</p> |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|---|---|--|---|
| | | | ensure there is no serious detriment to NGT's undertaking, as confirmed in Appendix A of this submission. |
| 15/85, 16/86, 16/88, 16/89, 16/90, 15/92, 15/94, 22/160 | National Grid Carbon Limited | NGCL did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered. | The Applicant has attempted to engage with NGCL throughout the Examination but has received no response. Standard protective provisions for the benefit of electricity, gas, water and sewerage undertakers have been included in Part 1 of Schedule 14 to the draft DCO. |
| 4/27, 13/60, 8/64, 14/76, 15/83, 15/92, 10/41, 13/70, 15/79 | Northern Gas Networks Limited | NGN has withdrawn its objection to the Scheme [AS-023] and therefore s127 of the PA 2008 is not triggered. | The Applicant and NGN completed an asset protection agreement, containing a bespoke form of protective provisions for NGN's benefit, on 24 June 2024. |
| 4/14, 4/25, 4/27, 6/34, 6/37, 9/40, 9/54, 9/55, 13/60, 8/63, 8/64, 8/66, 15/81, 16/91, 15/92, 15/93, 15/94, 18/96, 18/97, 18/100, 18/101, 18/102, 19/129, 20/130, 22/165, 6/29, 7/31, 6/33, 6/38, | Northern PowerGrid (Yorkshire) Plc | NPG has withdrawn its objection to the Scheme via an email to the Planning Inspectorate on 27 September 2024 at 10:05, and therefore s127 of the PA 2008 is not triggered. | Agreed protective provisions for the benefit of NPG are included in Part 8 of Schedule 14 to the draft DCO submitted at Deadline 6. |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|---|---|---|--|
| 10/41, 11/48, 11/50, 8/65, 8/67, 15/79, 15/85 | | | |
| 4/09, 4/15, 8/65, 13/69, 13/71, 15/79, 17/82, 3/10, 4/13, 4/14, 4/24, 4/25, 4/27, 6/34, 6/37, 10/45, 9/54, 9/55, 13/60, 8/64, 8/66, 14/68, 14/77, 18/96, 18/105, 18/107, 18/109, 18/110, 19/128, 21/140, 21/141, 21/142, 21/146 | Yorkshire Water Limited | Yorkshire Water did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered. | As requested at Issue Specific Hearing 1, the Applicant has obtained confirmation from Yorkshire Water that the standard protective provisions for the benefit of electricity, gas, water and sewerage undertakers that are included in Part 1 of Schedule 14 to the draft DCO are sufficient to protect Yorkshire Water's interests. This confirmation is appended to the Applicant's Summary of Oral Submissions and Post Hearing Notes for Issue Specific Hearing 1 [REP1-065] . |
| 15/79, 15/85, 15/83, 15/92 | Oil and Pipelines Agency | The Agency did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered. | The Applicant has attempted to engage with the Agency throughout the Examination but has received no response. |
| 10/45, 19/123 | Royal Mail Group Limited | Royal Mail did not submit a representation about the DCO | Royal Mail confirmed that it owns two post boxes within the Order limits, but as the Applicant does |

| Plot Nos. | Statutory undertaker or other apparatus owner | Engagement of Section 127 | Applicant's Position |
|------------------|--|---|---|
| | | Application and therefore s127 of the PA 2008 is not triggered. | not need to close or move these as a result of the Scheme, negotiations have concluded between the parties. |