



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Richborough Connection Project

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Business, Energy and Industrial Strategy**

Examining Authority

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8 March 2017

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ERRATA SHEET – Richborough Connection Project - Ref. EN020017

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department for Business, Energy and Industrial Strategy, dated 8 March 2017

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
58	4.4.120	"..cumulative impacts assessment (CEA).."	"..cumulative effects assessment (CEA).."
111	5.2.220	"..would be greater of greater.."	"..would be of greater.."
255	6.2.125	"..would be between £8.4m for a 36m and 10.5m for a 32.5m AOD reservoir."	"..would be between £8.4 million for a 36 metre and £10.5 million for a 32.5 metre AOD reservoir."
291	9.2.4	"..which is to been acquired.."	"..which is to be acquired.."
299	9.5.21 (final bullet)	"..respective principles.."	"..respective principals.."
301	9.5.34	"..Convention rights of those whose are affected."	"..Convention rights of those who are affected."

ExA's findings and conclusions and recommendation in respect of an application by National Grid Electricity Transmission plc

File Ref EN020017

The application, dated 11 January 2016, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 14 January 2016.

The applicant is National Grid Electricity Transmission plc.

The application was accepted for examination on 11 February 2016.

The examination of the application began on 8 June 2016 and was completed on 8 December 2016.

The development proposed is to construct, operate and maintain a 400, 000 volt (400kV) overhead line electricity connection between Richborough and Canterbury in Kent.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form at Appendix E.

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APPENDIX E: RECOMMENDED DCO AND DML

1 INTRODUCTION

1.1 INTRODUCTION

- 1.1.1 An application for an Order granting development consent for the proposed 400,000 volt (400kV) overhead electricity connection between Richborough and Canterbury North 400kV substations, together with related modifications to the electricity transmission and distribution networks was received by the Planning Inspectorate on 14 January 2016. The Secretary of State accepted the application for examination under s55 of the Planning Act 2008 (as amended) (PA2008) and Article 10(1)(b) of the Regulation on guidelines for trans-European energy infrastructure EU 347/2013 (the TEN-E Regulation) on 11 February 2016 [PD-001].
- 1.1.2 Under s56 of PA2008 National Grid Electricity Transmission plc (the Applicant) gave notice of the accepted application and, in response to the Applicant's notification, 83 Relevant Representations (RR) were received by the Planning Inspectorate [RR-001 to RR-083].
- 1.1.3 On 1 April 2016, under s65 of PA2008, a Panel of Examining Inspectors was appointed to hold the Examination of the application. Frances Fernandes was appointed lead member and chair of the Panel. The Panel comprises Frances Fernandes, Annie Coombs, Richard Rees and Stephen Roscoe.
- 1.1.4 The proposed development is a Nationally Significant Infrastructure Project (NSIP) under s14(1)(b) and s16 of PA2008 as the proposed project is a 400kV electric line, above ground, wholly within England and approximately 20 km long.
- 1.1.5 The proposed development is part of the Nemo Link[®] project, which is an electricity interconnector between Zeebrugge in Belgium and Richborough in the UK. It is a 'project of common interest' under the TEN-E Regulation and amendment (1391/2013) (guidelines for trans-European energy infrastructure).
- 1.1.6 The proposed development falls within Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (EIA Regulations 2009). The application was therefore accompanied by an Environmental Statement (ES) [APP-028 to APP-118].
- 1.1.7 By cover letter dated 12 and 15 April 2016 [OD-005 and AS-005] the Applicant submitted errata and supplementary information in response to advice given pursuant to s51 of PA2008.

1.2 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.2.1 The main events of the Examination and procedural decisions taken during the Examination can be seen at Appendix B of this report.

- 1.2.2 On 11 May 2016 the Panel wrote to all Interested Parties (IPs), Statutory Parties and Other Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (the Rule 6 letter) [PD-004]. This letter set out the:
- administrative arrangements for the Preliminary Meeting;
 - agenda for the Preliminary Meeting;
 - initial assessment of Principal Issues;
 - draft timetable for examination of the application;
 - procedural decisions made by the Examining Authority (ExA); and
 - availability of RRs and application documents for viewing purposes.
- 1.2.3 The first procedural decision made by the ExA in the Rule 6 letter [PD-004] was to accept the errata and supplementary information submitted by the Applicant on 15 April 2016 [AS-005]. The supplementary information submitted included a Schedule of Variation to the Book of Reference, Land Plans (updates to Sheets 11, 11D and 13) and accompanying cover letters dated 12 and 15 April 2016. A deadline of 14 July 2016 was set within the draft Examination Timetable for IPs to submit any comments.
- 1.2.4 The Panel's First Written Questions (FWQ) [PD-006] and procedural decisions were set out in the Rule 8 letter [PD-005] which was issued to all IPs on 16 June 2016. The Panel's Second Written Questions (SWQ) [PD-009] were issued to all IPs on 19 August 2016.
- 1.2.5 Requests were received for an Open Floor Hearing (OFH), therefore two OFHs were held under s93 of PA2008 on 27 July 2016, one in the morning and one in the evening.
- 1.2.6 The Panel held a number of Issue Specific Hearings (ISH) under s91 of PA2008 to ensure thorough examination of various topics. These were:
- DCO including Schedule 9 Deemed Marine Licence (28 July 2016, 27 September 2016 and 9 to 10 November 2016);
 - The effect of the application on the Broad Oak reservoir proposal (29 July 2016 and 28 September 2016);
 - Construction effects including effects on agricultural practices (29 September 2016); and
 - Landscape, visual and biodiversity effects including alternatives (30 September 2016).
- 1.2.7 A number of Affected Persons (APs) made requests for a Compulsory Acquisition Hearing (CAH) therefore a CAH was held under s92 of PA2008 and took place 19 to 20 October 2016.
- 1.2.8 On 29 November 2016 the Panel issued a Rule 17 request for further information. Deadline (DL) 9, on 6 December 2016, was added to the

timetable for submission of the further information, requiring a Rule 8(3) variation to the timetable [PD-014].

1.3 SITE INSPECTIONS

- 1.3.1 During the pre-examination period and throughout the course of the Examination, the Panel undertook a number of Unaccompanied Site Inspections (USIs). The details of these can be seen in EV-002(D).
- 1.3.2 An Accompanied Site Inspection (ASI) of the proposed route for the project took place on 25 to 26 July 2016 [EV-014(B)].

1.4 OTHER CONSENTS REQUIRED

- 1.4.1 In addition to the consent required under PA2008 (which is the subject of this recommendation report) the Applicant will require other consents to construct, operate and maintain the proposed development. As set out by the Applicant in its document 'Details of other Consents and Licences' [REP2-012] the following remaining consents, licences and permits are expected to be required:
- (a) approvals from relevant highway authorities and relevant planning authorities pursuant to the requirements contained in the draft Development Consent Order (dDCO);
 - (b) European Protected Species licences from Natural England (NE) pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010;
 - (c) affected species licences from NE under section 16 of the Wildlife and Countryside Act 1981;
 - (d) registration(s) by the Environment Agency (EA) under Regulation 21 of the Hazardous Waste (England and Wales) Regulations 2005;
 - (e) permits from the EA pursuant to the Environmental Permitting (England and Wales) Regulations 2010;
 - (f) flood risk activity permit(s) from the EA for erecting structures in, under or over a main river and for carrying out activities within a prescribed distance of a main river or main river flood defence structure pursuant to Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010, as amended by the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016;
 - (g) consent(s) from the relevant drainage board and Kent County Council (KCC) to alter ordinary watercourses pursuant to section 23 of the Land Drainage Act 1991;
 - (h) consent(s) from the relevant local authority pursuant to section 61 of the Control of Pollution Act 1974; and
 - (i) consent from NE to work on Sites of Special Scientific Interest (SSSI) under Regulation 28E of the Wildlife and Countryside Act 1981.

- 1.4.2 The following remaining licences and consents may be required:
- (a) licences from NE to affect badgers pursuant to section 10 of the Protection of Badgers Act 1992; and
 - (b) consent(s) from the relevant sewerage undertaker to discharge waste water to a sewer pursuant to section 118 of the Water Industry Act 1991.
- 1.4.3 The dDCO includes a Deemed Marine Licence (DML), as the proposal crosses the River Stour where it is tidal.

1.5 UNDERTAKINGS/ OBLIGATIONS GIVEN TO SUPPORT THE APPLICATION

- 1.5.1 At DL9, the Applicant submitted an engrossed section 106 agreement¹ with Dover District Council (DDC), Thanet District Council (TDC), Canterbury City Council (CCC) and KCC [REP9-001, Appendix 2].

1.6 STRUCTURE OF THE REPORT

- 1.6.1 This report does not contain extensive summaries of all the representations before the Examination although regard has been had to each and every representation made in the conclusions reached by the Panel together with all the submitted documentation. The approach taken is to address the essential issues and statutory requirements and to reach conclusions applying the statutory tests under PA2008, taking all important and relevant matters into account.
- 1.6.2 The contents of the report are on pages 3 to 5. The report is structured as follows:
- Chapter 1 introduces the application and sets out in summary the Examination and procedural decisions;
 - Chapter 2 sets out the main features of the proposed development;
 - Chapter 3 identifies and summarises the policy and legal context applicable to the application;
 - Chapter 4 looks at the need for and evolution of the proposed development including adequacy of the ES;
 - Chapter 5 sets out the Panel's main findings and conclusions on policy and factual issues;
 - Chapter 6 sets out the findings and conclusions on policy and factual issues in relation to the effect of the application on the Broad Oak reservoir proposal by South East Water (SEW);
 - Chapter 7 deals with the findings and conclusions in relation to Habitats Regulations;
 - Chapter 8 sets out the Panel's conclusions on the case for development consent, taking into account all application

¹ s106 of the Town and County Planning Act 1990 (as amended)

documents and written and oral representations submitted to the Examination;

- Chapter 9 deals with compulsory acquisition and land related matters;
- Chapter 10 considers the proposed dDCO, including requirements and any changes which were made to it during the course of the Examination; and
- Chapter 11 presents the Panel's overall conclusions and recommendations to the Secretary of State.

1.6.3 The following appendices are included:

- Appendix A sets out the abbreviations used in this report;
- Appendix B lists the main events that occurred during the Examination;
- Appendix C provides the final version of the Examination Library, which allocates a unique identifier for each document, categorised either by document type or by the deadline to which it was submitted;
- Appendix D, the Compulsory Acquisition Objections Appendix, identifies the different class of rights sought for each objector and distinguishes between those plots for which compulsory acquisition powers are sought; and
- Appendix E comprises the ExA's recommended DCO (rDCO) and DML.

1.6.4 Where document references are presented in square brackets in the text of this report, that reference can be found in the Examination Library (Appendix C). Where mention is made of the ExA's questions, the question number reference indicates whether it was a first or second round written question. First written questions start with a '1' then combine a section number and a question number, eg Q1.2.1. The second written questions are all prefixed with a '2' eg Q2.2.1.

1.6.5 There were nine deadlines for submission of certain information to the Examination. Where these are referred to in the report they are abbreviated to 'DL'. For example Deadline 1 is abbreviated to DL1.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

- 2.1.1 The Applicant is National Grid Electricity Transmission Limited (National Grid) which owns and operates the high voltage electricity transmission network in England and Wales. National Grid provides electricity supplies from generating stations to local distribution companies and its high voltage electricity transmission system operates at 275kV and 400kV. Separate regional companies own and operate the electricity distribution networks that comprise substation, overhead lines and underground cables which operate at 132kV and below and distribute electricity to homes and businesses. In the South East, where the proposed development would be located, the distribution network operator is UK Power Networks (UKPN).
- 2.1.2 Under the Electricity Act 1989, National Grid has a statutory obligation to offer to connect any new generating stations or interconnectors applying to connect to the transmission system. The proposed development would connect the Nemo Link[®]. Nemo Link[®] is an electricity interconnector which will allow the transmission of electricity between the UK and Belgium via a subsea cable of approximately 1000MW capacity, connecting to the national grid in the Richborough area [APP-127].
- 2.1.3 As described in the Applicant's Planning Statement [APP-127] the proposed development, subject of this Nationally Significant Infrastructure Project (NSIP) would include the following principal works:
- A new 400kV overhead line between Richborough and Canterbury North 400kV substations (to be known as the PC 400kV line). This would be approximately 20km long and would be built using 45 standard lattice pylons and 15 low height lattice pylons (60 pylons in total).
 - A permanent diversion of an existing lower voltage (132kV) overhead line (known as the PY 132kV line) to enable the PC 400kV line to be constructed above, thereby crossing over, the PY 132kV line. This would be done by constructing six new pylons, four of which would be of a lower height so that the PC 400kV line could then be constructed overhead. Also the removal of two pylons of the PY 132kV line to enable the permanent diversion.
 - Three temporary diversions of another existing lower voltage (132kV) overhead line (known as the PX 132kV line). The PX 132kV line needs to remain in operation (energised) whilst the PC 400kV line is being built. Therefore, in order to maintain local electricity supplies, three temporary diversions of the existing PX 132kV line would be needed where the PC 400kV line crosses over it. This would be done by transferring the PX 132kV line onto wooden poles so that the PC 400kV line can be built.

- The removal of 20.6km (79 pylons) of the PX 132kV line (including its temporary diversions) which run between Richborough 132kV substation and Canterbury South 132kV substation.
- Associated Development, including temporary access roads to reach pylon construction and demolition areas, bridge structures, highway works, construction compounds, protective scaffold structures, pylon work sites and ancillary works.

2.1.4 A full list of the works and associated development can be seen in Schedule 1 of the recommended Development Consent Order (rDCO).

2.2 LOCATION

2.2.1 The proposed development is located within the local authorities of Canterbury City Council (CCC), Thanet District Council (TDC) and Dover District Council (DDC), within the county of Kent in the south east of England. The location of the whole route of the proposed development can be seen on the Applicant's Location Plan [APP-013].

2.2.2 For the purposes of its consultation and application documentation the Applicant split the route of the proposed development into four sections (A to D). These sections run from west to east and broadly align with areas of different landscape character. These are: Section A (Stour Valley); Section B (Sarre Penn Valley); Section C (Chislet Marshes); and Section D (Ash Level).

2.2.3 As described in the Applicant's Planning Statement [APP-127] the area of the proposed development is predominately rural, agricultural land, with marshland towards the eastern end of the route. The western end of the route, at Canterbury, is the main urban area. At the eastern end of the route, at Richborough, there are several industrial and commercial land uses. Residential development in the surrounding area includes Canterbury, Broad Oak, Sturry, Westbere, Hersden, Hoath, Upstreet, Chislet, Sarre, Monkton and Minster.

2.2.4 The main roads in the area include the A28, between Canterbury and Margate, which would be crossed by the proposed PC 400kV line and is crossed by the existing PX 132kV line. The A253 is located to the north of the proposed 400kV line and provides access between Ramsgate and the A28 at Sarre. The A256 is to the east and provides access between Broadstairs and Sandwich. The A257 runs from Canterbury to Sandwich south of the proposed 400kV overhead line and provides access at the eastern end. At the western end of the route, the proposed PC 400kV line and existing PX 132kV line cross the A291, which provides access between the A299 to the north and the A28 to the south. The Canterbury-Ramsgate railway runs broadly parallel to the proposed PC 400kV line.

2.2.5 Within the Order limits is the West Blean and Thornden Woods (in part known as Lynne Wood) Site of Special Scientific Interest (SSSI). Also within the Order limits are several areas of ancient woodland. These

are Shelford/ Beecham Woods (Lynne Wood), Den Grove Wood and Kemberland Wood and Park Rough.

2.2.6 Outside of the Order limits, within the wider area, are the following internationally important statutory nature conservation designations, all of which also contain National Nature Reserves:

- Thanet Coast and Sandwich Bay Ramsar and Special Protection Area (SPA);
- Sandwich Bay Special Area of Conservation (SAC);
- Stodmarsh Ramsar, SPA and SAC; and
- Blean Complex SAC.

2.2.7 Within the wider area there are also several areas designated as SSSIs which are nationally important nature conservation designations. These include:

- Chequers Wood and Old Park SSSI;
- East Blean Woods SSSI (partly within Blean Complex SAC);
- Stodmarsh SSSI (which falls within Stodmarsh SAC, SPA and Ramsar); and
- Sandwich Bay and Hacklinge Marshes SSSI, part of which falls within Sandwich Bay SAC, SPA and Ramsar.

2.2.8 There are no scheduled monuments within the Order limits. The nearest are an Anglo-Saxon cemetery at Sarre and a Saxon shore fort, Roman port and other remains at Richborough. There are also scheduled monuments at Minster and Monkton and several within Canterbury City Centre. There is also a World Heritage Site at Canterbury. This is discussed in Section 5.9.

2.2.9 Tile Lodge Farmhouse is Grade II listed and is 35m from the Order limits and Grade II listed Chislet Park is 40m from the Order limits. This is discussed in Section 5.9.

2.2.10 There are no national landscape designations within the Order limits. The closest is the Kent Downs Area of Outstanding Natural Beauty which is approximately 5km south of the southernmost end of the Order limits. This is discussed in Section 5.2.

2.3 THE APPLICATION AT THE CLOSE OF EXAMINATION

2.3.1 Fifteen different types of plan were submitted with the application to explain the proposed development. On 11 February 2016 s51 advice was given to the Applicant regarding inconsistencies between the plot numbering on the Land Plans, the schedule of plot numbers and the Book of Reference [OD-004]. In response to this Sheets 11, 11D and 13 of the Land Plans were updated [AS-007]. At Deadline (DL) 8 Sheets 17 and 17A of the Land Plans were updated to reflect changes to the plot numbers in the Book of Reference so the originally submitted Land Plans [APP-015] were superseded [REP-008].

- 2.3.2 At DL8 Sheet 17 of the Extinguishment of Easements, Servitudes and Other Private Rights Plans was also updated to reflect changes to the plot numbers in the Book of Reference. Therefore the originally submitted plans [APP-016] were superseded [REP8-009].
- 2.3.3 Changes to the plot numbers in the Book of Reference also resulted in the submission of updated Special Category Land Plans and Crown Plans so at DL8 the originally submitted plans [APP-017] were superseded [REP8-010].
- 2.3.4 The Applicant submitted a draft DCO (dDCO) [APP-006] with its application. Updated drafts were submitted at DL2 [REP2-003], DL4 [REP4-003] and DL6 [REP6-003]. On 2 November 2016 the Panel issued its schedule of revisions to the Applicant's dDCO 2.1(C) [REP6-003] and requested Interested Parties to comment by DL7 [PD-011 and PD-012]. At DL7 the Applicant submitted its updated dDCO in the final form it wished it to be made [REP7-003]. At DL8 and DL9, the Panel received minor typographical amendments from the Applicant which it asked to be incorporated into its final form DCO.
- 2.3.5 A number of other documents were updated by the Applicant throughout the Examination. To assist with navigation of its documents and show which documents have been superseded or supplemented the Applicant submitted a Guide to the Application, which was updated throughout the examination. The final version was submitted at DL8, on 24 November 2016 [REP8-002].

2.4 RELEVANT PLANNING HISTORY

- 2.4.1 As part of the Nemo link[®], an application under the Town and Country Planning Act 1990 for a new Richborough 400kV substation and converter station near Sandwich, in Kent, was made to both TDC and DDC, due to the site straddling the administrative boundary of both Councils. Outline planning permission was granted in December 2013. As stated in the Joint Councils' Local Impact Report [REP2-061], a reserved matters application was then made for the appearance, layout and scale of the converter station and substation. This was approved by DDC on 9 May 2016 and TDC on 24 May 2016.
- 2.4.2 A number of NSIP applications for electric lines have been made and all that have been determined have been granted consent. This application is the first TEN-E project. Under Article 10(1)(a) of the TEN-E Regulation, National Grid gave formal notification of its intention to submit an application to construct the Richborough Connection on 1 December 2014 to the National Competent Authority, delegated from the Secretary of State for Business, Energy and Industrial Strategy (previously the Department of Energy and Climate Change) to the Planning Inspectorate.
- 2.4.3 There are proposals for residential development at a site between Sturry and Broad Oak and a further residential development site at Hersden. These sites are included in the Canterbury District Council

Local Plan (Potential Main Modifications) April 2016, as is the proposed Sturry Relief Road.

- 2.4.4 A reservoir to the north-east of Canterbury is proposed by South East Water near to Broad Oak. This is discussed in detail in Chapter 6.

2.5 UNDERTAKINGS

- 2.5.1 During the course of the Examination, agreement was reached on a Development Consent Obligation made pursuant to s106 of the Town and Country Planning Act 1990 (TCPA) between the Applicant, and the Councils (CCC, DDC, TDC and Kent County Council). The engrossed version, dated 5 December 2016 was submitted at DL9. This is referred to in Sections 5.2, 5.4, 5.5, 5.7, 5.9, Chapter 8 and Chapter 10 of our report [REP9-001].

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This chapter sets out the legal and policy context for the examination of the application which was taken into account and applied by the Panel in carrying out its examination and in making its findings and recommendations to the Secretary of State for Business, Energy and Industrial Strategy (BEIS) as the relevant decision maker for a project in the field of energy under s14 of Planning Act 2008 (as amended) (PA2008).
- 3.1.2 The Applicant has set out the policy that it considers relevant in the Environmental Statement Planning Policy Context [APP-029] and the Planning Statement [APP-127, Section 7 and Appendix C]. The Statement of Common Ground (SoCG) between the Applicant and the Councils (Canterbury City Council, Dover District Council, Thanet District Council and Kent County Council) [REP8-014] sets out the agreed planning policy context. The Joint Councils' Local Impact Report also sets out the policy context for the application [REP2-061].

3.2 PLANNING ACT 2008 (AS AMENDED)

- 3.2.1 The application is for a Development Consent Order (DCO) under PA2008. The application is for a Nationally Significant Infrastructure Project (NSIP) and it falls within s14(1)(b) of PA2008 as it includes the "*installation of an electric line above ground*". The provisions for projects to be included as an electric line NSIP are set out in s16 of PA2008.
- 3.2.2 Section 104(1) of PA2008 applies "*in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.*" As there is a National Policy Statement (NPS) in place for energy it falls to be decided under s104 of PA2008. Section 104(2) requires the Secretary of State to have regard to:

"(a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),

(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009,

(b) any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision."

- 3.2.3 Under s104(4) to (8) while the Secretary of State must take the above into account, he must be satisfied that the decision made on the application would not lead to the United Kingdom (UK) being in breach of any of its international obligations or lead to the Secretary of State being in breach of any duty imposed by law or make an unlawful decision. The Secretary of State must also consider whether the adverse impacts of the proposed development outweigh its benefits, and whether any condition prescribed for deciding an application other than in accordance with an NPS is met.
- 3.2.4 Our report sets out the Panel's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008.

3.3 NATIONAL POLICY STATEMENTS

- 3.3.1 As this is a project for electricity networks infrastructure there are two relevant NPSs which the Secretary of State is required to take into account. These are:
- NPS EN-1: Overarching National Policy Statement for Energy; and
 - NPS EN-5: Electricity Networks Infrastructure.
- 3.3.2 These NPSs were produced by the Department for Energy and Climate Change (now BEIS) and received designation by the Secretary of State for Energy and Climate Change on 19 July 2011. Given that there are NPSs which have effect in relation to the development of the description to which the application relates, the decision on the application must be made pursuant to s104 of PA2008.
- 3.3.3 The implications of these NPSs are considered in subsequent chapters of this report and under s104 in the recommendations to the Secretary of State.

3.4 TEN-E REGULATION EU 347/2013

- 3.4.1 This project is proposed to provide a connection between the permitted Nemo Link[®] and the existing UK electricity network. The European Commission has adopted guidelines to assist in the development of energy networks within Europe. These guidelines are known as the TEN-E Regulation (guidelines for trans-European energy infrastructure EU347/2013). The Panel has taken these guidelines into account in making its recommendation to the Secretary of State.

3.5 MARINE AND COASTAL ACCESS ACT 2009

- 3.5.1 The Marine and Coastal Access Act 2009 (MCA) introduced the production of marine plans and designation of Marine Conservation Zones (MCZs) in UK waters as well as establishing the Marine Management Organisation (MMO). The UK Marine Policy Statement (MPS) and marine planning are dealt with below. Under the MCA the Secretary of State for Environment, Food and Rural Affairs designated

27 MCZs around the English coast to form part of a network of Marine Protected Areas on 21 November 2013. A further 23 MCZs were designated on 17 January 2016. A third phase of MCZ sites is due to be consulted on in 2017 and designated in 2018.

- 3.5.2 The Applicant's first draft DCO (dDCO) includes, at Schedule 9, a Deemed Marine Licence (DML). While the proposed development is mainly on land, part of the proposed new connection will go over a part of the River Stour below mean high water spring (MHWS) and therefore may impact upon the marine area.
- 3.5.3 Under s104(2)(aa) of PA2008 the Secretary of State must have regard to the appropriate marine policy documents. In the MMO's Relevant Representation (RR) [RR-045] it states that the Planning Inspectorate is required to have regard to the MPS and any relevant marine plan.

UK MARINE POLICY STATEMENT

- 3.5.4 The MPS was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.
- 3.5.5 The MPS provides the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone) until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks².
- 3.5.6 The MPS provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.5.7 The MPS has provided the overarching policy context for the Panel's consideration of the application and DML.

INSHORE MARINE PLANS

- 3.5.8 The MMO is the marine plan authority for the south-east marine plan area. There was no marine plan in place for the south-east area at the close of the Examination.

² see Marine and Coastal Access Act 2009 s42(3) and (4)

3.6 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

HABITATS DIRECTIVE (COUNCIL DIRECTIVE 92/43/EEC)

- 3.6.1 The Habitats Directive (together with the Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Habitats Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc), which are of European importance.
- 3.6.2 The Applicant submitted its No Significant Effects Report with the application [APP-119 and APP-120]. This concluded that there would be no likely significant effect on any European sites³ screened into its assessment, either alone or in-combination with other plans or projects.
- 3.6.3 When determining this application the Secretary of State as the competent authority must take the Habitats Directive into account. Matters to do with the Habitats Directive and its implications are addressed in Chapter 7 of our report.

BIRDS DIRECTIVE (COUNCIL DIRECTIVE 2009/147/EC)

- 3.6.4 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The Birds Directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPA) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.6.5 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds; in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

³ The term European sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), and Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

- 3.6.6 The Birds Directive and its implications have been taken into account in considering the application and these are addressed in Chapter 7 of our report.

CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED) THE HABITATS REGULATIONS

CONSERVATION OF HABITATS AND SPECIES (AMENDMENT) REGULATIONS 2012

- 3.6.7 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive and the Birds Directive are transposed in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.6.8 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The EU Habitats and Birds Directives are transposed in UK offshore waters by separate regulations – The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended). The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.6.9 These 2012 Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Birds Directive) are transposed clearly.
- 3.6.10 As stated in EN-1, when determining this application the Secretary of State must, in accordance with the Conservation of Habitats and Species Regulations 2010, consider whether the proposed development may have a significant effect on a European site of nature conservation importance alone or in-combination with other plans or projects. The Panel has set out its findings and conclusions in relation to HRA in Chapter 7 of our report.

WATER FRAMEWORK DIRECTIVE

- 3.6.11 On 23 October 2000, the 'Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy' or, in short, the EU Water Framework Directive (the WFD) was adopted.

- 3.6.12 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000⁴.
- 3.6.13 Twelve 'Water Notes' which intend to give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download⁵.
- 3.6.14 To be in compliance with EN-1 the Secretary of State must take the Water Framework Directive into account. This is considered in Section 5.8 of our report and in the final recommendations.

3.7 OTHER LEGAL AND POLICY PROVISIONS

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992

- 3.7.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the Panel has had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.
- 3.7.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.7.3 This is of relevance to biological environment and ecology and is considered in Section 5.5 of our report.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

- 3.7.4 The Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSIs) and for local authorities to establish Local Nature Reserves.
- 3.7.5 A National Park and/or AONB has statutory protection in order to conserve and enhance the natural beauty of its landscape. National Parks and/ or AONBs are designated for their landscape qualities. The purpose of designating a National Park and/ or AONB is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

⁵ http://ec.europa.eu/environment/water/participation/notes_en.htm

- 3.7.6 The statutory protection of the Kent Downs AONB, which lies approximately 4.7km from the Order limits at its nearest point, is considered in Section 5.2 on landscape and visual matters.

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

- 3.7.7 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.7.8 The Act is divided into four parts: Part I relating to the protection of wildlife; Part II relating to designation of SSSIs and other designations; Part III on public rights of way; and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England (NE).
- 3.7.9 This has relevance to consideration of impacts on SSSIs and on protected species and habitats. As stated in the Planning Statement [APP-127] there is one SSSI which is partly within the Order limits (West Blean and Thornden Woods SSSI). A number of protected species and habitats would also be affected by the proposed development. The effects are reported in Section 5.5 of our report.

THE HEDGEROW REGULATIONS 1997

- 3.7.10 These regulations set out the criteria for identifying 'important' hedgerows and are the main regulations used for protecting hedgerows. The ecological and heritage value of hedgerows is considered in Sections 5.5 and 5.9 respectively.

PROTECTION OF BADGERS ACT 1992

- 3.7.11 Under the Protection of Badgers Act (1992) it is an offence to capture, kill or injure a badger, to damage or destroy a sett, to block access to a sett or to disturb a badger in its sett. It is also an offence to treat a badger cruelly, to deliberately send or intentionally allow a dog into a sett or to bait or dig for badgers. Interference with a badger sett should be avoided but if this is not possible then developers must apply to NE for a licence.
- 3.7.12 The effect of the proposed development on badgers and their setts is considered in Section 5.5 of our report.

EELS (ENGLAND AND WALES) REGULATIONS 2009

- 3.7.13 The Eels (England and Wales) Regulations 2009 require the free passage of eels in inland waters. This is relevant to the application with regard to the stream diversion which forms part of the Broad Oak

reservoir proposal and more generally with regards culvert removal and is considered in Section 5.5 and Chapter 6.

THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

- 3.7.14 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.7.15 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.
- 3.7.16 In relation to the application the purpose of conserving and enhancing the natural beauty of the Kent Downs AONB is considered in Section 5.2; and the West Blean and Thornden Woods SSSI is considered in Section 5.5 of our report.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

- 3.7.17 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercise of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.7.18 This is of relevance to effects on biodiversity and landscape matters in the proposed development and is considered in Section 5.5 of our report.

ELECTRICITY ACT 1989

- 3.7.19 Under the Electricity Act 1989 the Applicant has a duty to develop and maintain an efficient, co-ordinated and economical system of electrical transmission. It also confers a duty upon the Applicant to ensure that it has regard to amenity when carrying out its undertaking. This has relevance to the evolution of the design of the proposed development and is considered in Section 5.3 of our report.

NATIONAL INFRASTRUCTURE PLAN

- 3.7.20 The National Infrastructure Plan (December 2014)⁶ sets out the Government's long-term plans for UK infrastructure. The Plan notes that electricity transmission and interconnectors are part of the priority projects for electricity security.

NATIONAL INFRASTRUCTURE COMMISSION

- 3.7.21 The National Infrastructure Commission report 'Smart Power' of March 2016⁷ identifies the need for interconnectors to European grids to aid resilience of the UK grid.

THE HUMAN RIGHTS ACT 1998

- 3.7.22 The European Convention on Human Rights is incorporated into domestic law by the Human Rights Act 1998. The Panel has taken this into account as part of the examination of this application and is discussed in Chapter 9.

THE EQUALITY ACT 2010

- 3.7.23 Every public authority is required to have regard to the Public Sector Equality Duty under s149 of the Equality Act 2010. The Panel has taken this into account as part of the examination of this application and is discussed in Chapter 9.

3.8 MADE DEVELOPMENT CONSENT ORDERS

- 3.8.1 The Applicant made reference to development consent orders for electric lines, namely the National Grid Kings Lynn B Power Station Connection DCO (S.I. 2013/3200); the National Grid North London Reinforcement Project DCO (S.I. 2014/1052); and the National Grid Hinkley Point C Connection DCO (S.I. 2016/49).
- 3.8.2 The Triton Knoll Electrical System DCO (S.I. 2016/880) was also referred to in the Examination in relation to Crown land.

3.9 TRANSBOUNDARY EFFECTS

- 3.9.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) the Secretary of State for Communities and Local Government screened the proposed development for significant effects on the environment in another European Economic Area State on 3 November 2014 and 15 March 2016. In both instances the Secretary of State adopted the view

⁶ HM Treasury (2014) National Infrastructure Plan 2014, December 2014.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505218/IC_Energy_Report_web.pdf

that the proposed development was not likely to have a significant effect on the environment in another European Economic Area State.

- 3.9.2 In reaching this view the Secretary of State has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary in relation to this application. The ExA agrees with the view of the Secretary of State for Communities and Local Government.

3.10 LISTED BUILDINGS, CONSERVATION AREAS AND SCHEDULED MONUMENTS

- 3.10.1 When deciding an application which affects a listed building or its setting, a conservation area, or a scheduled monument or its setting the decision-maker must have regard to the duties set out in Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010. Matters regarding historic heritage are discussed in Section 5.9 of our report.

3.11 NATIONAL PLANNING POLICY FRAMEWORK

- 3.11.1 The National Planning Policy Framework (NPPF) was published in March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. Paragraph 3 of the NPPF states that it does not contain specific policies for NSIPs for which particular considerations apply. It explains that NSIP projects are determined in accordance with the decision-making framework set out in PA2008, and relevant NPSs for major infrastructure, as well as any other matters considered both important and relevant (which may include the NPPF).
- 3.11.2 The Applicant's Planning Statement [APP-127] states that the NPPF does not contain policies in relation to electricity networks infrastructure but it does contain policies for conserving and enhancing the natural and historic environment and these were considered when developing the proposed development.
- 3.11.3 The Planning Statement draws attention to the NPPF's statement that there is a need for the planning system to "*support the transition to a low carbon future in a changing climate.*" The Applicant states that the proposed project will connect to the Nemo Link[®], which will give the UK the opportunity to trade in European power markets by exporting energy and importing renewable energy from Europe. This will help the UK to meet its renewable energy targets.
- 3.11.4 The Applicant also draws attention to the matters of traffic and transport, good design, climate change, flooding and coastal change, conserving and enhancing the natural environment and the historic environment. These matters are contained in the NPPF and the Applicant explains how these have been considered. These matters are discussed in Sections 5.3 (good design and climate change), 5.5

(conserving and enhancing the natural environment), 5.7 (traffic and transport), 5.8 (flooding), 5.9 (historic environment) and 5.11 (coastal change).

3.12 LOCAL IMPACT REPORTS

3.12.1 Section 104 of PA2008 states that in deciding the application the Secretary of State must have regard to any Local Impact Report (LIR) within the meaning of s60(3). There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 16 June 2016 [PD-005].

3.12.2 The relevant local authorities are Canterbury City Council, Dover District Council, Thanet District Council and Kent County Council. The Councils submitted a joint LIR [REP2-061]. The principal matters raised in the LIR are:

- landscape and visual impacts;
- historic environment;
- archaeology;
- biodiversity;
- highway impacts;
- Public Rights of Way;
- noise and vibration;
- air quality;
- water environment;
- waste management;
- geology, soils and agricultural land;
- socio-economic impacts; and
- cumulative effects.

3.12.3 These matters are considered in Chapters 4, 5, 6, 8 and 10 of our report.

3.13 THE DEVELOPMENT PLAN

3.13.1 The application relates to land in the local authority areas of Canterbury City Council, Dover District Council, Thanet District Council and the county of Kent. As set out in the Joint Councils' LIR [REP2-061] the following local planning policy documents are relevant to the consideration of this application:

- Kent Minerals and Waste Local Plan 2013-2030 (May 2016);
- Kent Environment Strategy (March 2016);
- Kent Downs Management Plan 2014-2019 (April 2014);
- Kent Local Flood Risk Management Strategy (June 2013);
- Draft Canterbury District Local Plan (Potential Main Modifications) April 2016;
- Saved Policies of the Canterbury District Local Plan 2006 (2009);
- Dover District Land Allocations Local Plan (January 2015);
- Dover District Core Strategy (February 2010);

- Dover District Council Local Plan Saved Policies (2002);
- Draft Thanet Local Plan to 2031 (Preferred Options version); and
- Thanet Local Plan 2006 Saved Policies (2009).

3.13.2 As stated in paragraph 4.1.5 of EN-1, if there is any conflict between the above documents and a NPS then the NPS takes precedence due to the national significance of the infrastructure.

3.14 POWER OF THE SECRETARY OF STATE TO MAKE A DECISION

3.14.1 The Panel was aware of the need to consider whether changes to the application made during the Examination meant that the application had changed to the point where it was a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.

3.14.2 The SoS will be aware of the March 2015 updated Planning Act 2008: Guidance for the examination of applications for development consent issued by the Department for Communities and Local Government, paragraphs 109 to 115, which provides guidance in relation to changing an application post acceptance.

3.14.3 The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.14.4 The SoS may wish to take into account the Panel's view that the nature and scope of the application did not materially change during the course of the Examination to such a degree that by the close of the Examination it represented a different application. There were no representations received to suggest otherwise.

4 NEED FOR AND EVOLUTION OF THE PROPOSED DEVELOPMENT

4.1 INTRODUCTION

- 4.1.1 Section 104 of the Planning Act 2008 (PA2008) confirms that the Secretary of State must have regard to relevant National Policy Statements (NPSs).
- 4.1.2 Section 104(2) advises that *"In deciding the application, the Secretary of State must have regard to- (a) any national policy statement which has effect in relation to the development of the description to which the application relates...[and] (d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision"*.
- 4.1.3 Section 104(3) requires the Secretary of State to decide the application in accordance with any relevant NPS except to the extent that one or more of the subsections 104(4) to (8) applies. Section 104(7) advises that *"this subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits."*
- 4.1.4 Here, the relevant NPSs are the Overarching NPS for Energy: EN-1 (EN-1) and the NPS for Electricity Networks Infrastructure: EN-5 (EN-5). EN-1 provides the primary basis for making decisions on development consent applications for energy infrastructure in England by the Secretary of State, together with EN-5 which is specifically related to electricity networks infrastructure.
- 4.1.5 In terms of alternatives, EN-1 advises that their relevance is, in the first instance, a matter of law⁸ and that alternatives which are not among the main alternatives studied by the Applicant, as reflected in the ES, should only be considered if they are believed to be important and relevant to the decision⁹. There is no general policy requirement in EN-1 to consider alternatives or to establish whether the project represents the best option¹⁰. However if an application gives rise to adverse impacts; alternative options could be important and relevant considerations. Where there is a policy or legal requirement to consider alternatives this should be done in a proportionate manner and in consideration of whether there is a realistic prospect of the alternative delivering the same infrastructure in the same timescale¹¹.
- 4.1.6 The specific requirements in policy¹² to consider alternatives are discussed in this chapter of our report in relation to the Applicant's

⁸ EN-1, para 4.4.1

⁹ EN-1, para 4.4.3

¹⁰ EN-1, para 4.4.1

¹¹ EN-1, para 4.4.3

¹² EN-1, para 5.3.7, 5.7.13 and 5.9.10 and EN-5, para 2.8.7, 2.8.8 and 2.8.9

pre-application consideration of alternatives and in Chapter 5 in the context of the assessment principles of the NPSs, in particular, in relation to landscape and visual effects, biodiversity and flood risk¹³.

- 4.1.7 Chapter 6 focusses on the effect of the application on the Broad Oak reservoir proposal and in this context, the chapter considers the alternative route alignments and technologies proposed by South East Water (SEW) in the vicinity of the proposed reservoir site (the SEW alternatives) and draws conclusion on whether the proposed development could co-exist with the Broad Oak reservoir proposal, which is relevant to much of the disagreement over alternatives between the two parties.
- 4.1.8 Chapter 7 covers whether the specific legislative requirement to consider alternatives under the Habitats Directive, is necessary based on the Applicant's No Significant Effects Report (NSER) and its conclusions on likely significant effects (LSE) as well as the comments received from Interested Parties (IPs). The requirement to consider alternatives in accordance with Environmental Impact Assessment (EIA) Directive is considered later in this chapter
- 4.1.9 In Chapter 8, we draw together our conclusions on alternatives, from the different places in which they have been considered.
- 4.1.10 Alternatives are considered again in Chapter 9 in the context of the case for compulsory acquisition powers.

ORGANISATION OF THIS CHAPTER

- 4.1.11 This chapter covers:
- the need for the proposed development;
 - adequacy of pre-application engagement and consultation; and
 - conformity with the NPSs; including pre-application consideration of alternatives and the adequacy of the EIA process and the Environmental Statement (ES).

4.2 THE NEED FOR THE PROPOSED DEVELOPMENT

- 4.2.1 The need for new nationally significant energy infrastructure projects is set out in Part 3 of EN-1. This confirms that the Secretary of State must assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for it. Section 3.3 sets out the key reasons why the Government believes there is an urgent need for new electricity nationally significant infrastructure projects (NSIP) including the need for interconnection of electricity systems.¹⁴ As a consequence of this urgent need, there is a

¹³ EN-1, para 4.4.2

¹⁴ EN-1, para 3.3.1

presumption in favour of granting consent for energy NSIPs unless other policies in the NPS indicate that permission should be refused¹⁵.

- 4.2.2 The Panel notes the evidence provided by the Applicant in its Need Case and Statement of Reasons, including its explanation of the need to plan for the extension of the National Electricity Transmission System in England in order to deliver the Nemo Link[®] discussed in Chapter 2 of our report. The Applicant explains the need for interconnectors to contribute to a properly functioning European energy market; to enhance security of supply in both Great Britain and Europe and to manage both intermittency and excess power associated with renewable generation [APP-129 and REP8-004].
- 4.2.3 The Applicant sets out the particular need in the vicinity of Richborough, explaining that the 2008 consented application to connect a 1GW electricity connector at Richborough requires a connection which complies with the National Electricity Transmission System Security and Quality of Supply Standard. In order to provide a transmission connection, new significant infrastructure is required between Richborough and the existing transmission system.
- 4.2.4 The Panel received a range of oral and written representations questioning different aspects of the proposed development, including transmission connection options, but we did not receive representations questioning its need.

CONCLUSION

- 4.2.5 The ExA is satisfied that the need case is robust and has been made by the Applicant in accordance with the NPS framework. The proposed development would enable delivery of the Nemo Link[®] and thereby contribute to meeting the need for new electricity transmission and distribution infrastructure identified in EN-1. Therefore, in terms of broad matters of principle, we are satisfied that the need for the proposed development has been established.

4.3 PRE-APPLICATION ENGAGEMENT AND CONSULTATION

- 4.3.1 A number of IPs expressed the view that the consultation during pre-application was inadequate. SEW considered it to be inadequate both in the case of consultation with itself as a statutory undertaker and landowner and in case of consultation with others such as the local authorities and other landowners who might have a legitimate interest in understanding how SEW's proposals might be prejudiced [REP2-099, para 89].

¹⁵ EN-1, para 4.1.2

THE CASE BY SOUTH EAST WATER

- 4.3.2 Briefly, SEW's concerns over a number of issues discussed in this chapter arise from its view that there are conflicts between the proposed development and the Broad Oak reservoir proposal (which is contained in the Water Resources Management Plan 2014 (WRMP14)), which would make the reservoir proposal undeliverable. SEW believes that the two proposals could not co-exist because the land it owns which would be used for reservoir mitigation to ensure compliance with the Water Framework Directive (WFD) would be compromised by the presence of the proposed overhead line.
- 4.3.3 SEW also suggested three alternatives in terms of routing and technology for the proposed development in the area of the reservoir proposal (the SEW alternatives).
- 4.3.4 SEW set out in detail its opinion on the adequacy of the consultation that the Applicant undertook with SEW in its capacity as statutory undertaker and landowner. It refers to the legislation¹⁶, regulations¹⁷ and guidance¹⁸. SEW maintains that the consultation process followed by the Applicant was "*manifestly inadequate and did not comply with the requirements of the Planning Act and DCLG Guidance*". SEW states that it "*considers that the demonstrably flawed consultation process would provide a basis for a statutory challenge to the Proposed DCO should it be made.*" [REP2-099, para 89(e)].
- 4.3.5 In its WR, SEW provided details of contact and consultation during the time of preparation of the Applicant's routing and connection studies reports and quotes from the reports to demonstrate the way in which the reservoir proposal has been addressed at the different stages. SEW considers that the Applicant has only "*gone through the motions*" of consultation and has taken "*a closed mind approach*" to alternatives and amendments [REP2-099, para 89].
- 4.3.6 The Applicant's response explained that it identified the PA2008 consultation requirements in its Consultation Report [APP-124] and has set out how it has met those requirements¹⁹. The Applicant points out that the relevant local authorities consider that consultation has been adequate and notes that the application for development consent was accepted for Examination on that basis [REP3-019, para 3.3].
- 4.3.7 The Applicant also points out that contrary to the contention by SEW that they were not on the list of stakeholders consulted on the Route Corridor Study (RCS); SEW was included in this consultation (as noted in Appendix 3 of the Consultation Report Appendices [APP-125]) [REP3-019, para 3.6].

¹⁶ Planning Act 2008 (PA2008), Sections 37, 42 and 47

¹⁷ Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

¹⁸ DCLG Guidance: Planning Act 2008: Guidance on the pre-application process

¹⁹ APP-124, Table 5.3 sets out how the Applicant has complied with statutory requirements of PA2008 and Table 5.4 sets out how it has complied with the statutory requirement of the TEN-E Regulation

- 4.3.8 The Applicant and SEW remain in disagreement over the matter of whether SEW was consulted adequately during the optioneering and design evolution processes for the proposed development. Both parties submitted details of correspondence that had taken place during the time the Applicant was developing its design for the proposed development [REP3-019, para 3.4 to 3.16 and Appendix 1, 2; REP4-042, para 27 to 39, REP4-043 and REP4-045 and REP5-012, Q2.3.27].
- 4.3.9 SEW also argued that by not having had proper regard to the Broad Oak reservoir proposal, the Applicant has not communicated information about the interaction between the proposed development and the reservoir proposal to consultees who might also be affected by any prejudice to the delivery of the proposed reservoir [REP2-099, para 67]. SEW argued that the Preliminary Environmental Information Report (PEIR) did not provide enough information to comply with the duty to consult because it should have allowed information to be provided on the aforementioned interaction at a time when comments could have made a difference to the design of the proposed development [REP2-099, para 82].
- 4.3.10 SEW's contention that others have not had the opportunity to engage relates only to the way the Applicant has handled the Broad Oak reservoir proposal.
- 4.3.11 The Applicant does not agree. It argues that it took account of all the information provided by SEW at that time. It considers its statutory consultation struck the appropriate balance between accommodating the Broad Oak reservoir proposal, and the effect of the proposed route on the residents of Broad Oak [REP3-019, para 3.21]. The Applicant is of the opinion that the results of that consultation has given no reason to amend its scheme in the way proposed by SEW [REP3-019, para 3.24].

THE VIEWS OF OTHER INTERESTED PARTIES

- 4.3.12 In Relevant Representations (RR) over 20 IPs who are landowners or landowners' agents contend that the Applicant has failed to consult and adequately engage; and failed to provide constructive and detailed responses to queries and concerns raised through the entire period of consultation up to the Development Consent Order (DCO) application being made [eg RR-041]. The National Farmers' Union (NFU) reinforces this point of view and mentions specifically that no consultation was undertaken on the decision to move the proposed overhead line north of the PY 132kV line at the eastern end of the alignment [RR-043]²⁰. A number of other IPs including the three MPs for East Kent, Chislet Parish Council, and Broad Oak Preservation

²⁰ More explanation about why this is proposed is set out in Section 4.4 of our report

Society (BOPS)²¹ consider the consultation has been inadequate, that the Applicant has not listened to the feedback from local people and that their views have been ignored [RR-032, RR-080, RR-083]. These points are also made by some IPs during the Examination.

- 4.3.13 The Applicant responded to the NFU's WR and responses to FWQ from the NFU and St John's College, Cambridge, which raised matters to do with consultation indicating it had provided details on the project to landowners at each relevant stage of the project development process, as they become available, has sought face to face meetings with landowners and that it remains committed to ongoing dialogue to resolve any outstanding issues [REP3-013, Section 2.3 and REP3-015, Q1.7.52 and Q1.9.7].
- 4.3.14 The Applicant also explained that the movement of the proposed overhead line northwards was in response to biodiversity matters raised by Natural England (NE) during the consultation process; and that the proposed overhead line route would remain within the route corridor and within the Order limits as presented in the PEIR during statutory consultation. As that change took place as a result of feedback received to the statutory consultation the Applicant did not consider that a further period of statutory consultation was required [REP3-013, Section 2.3].
- 4.3.15 The Applicant concluded that appropriate information was provided at each stage of the consultation process to enable consultees to respond and that information provided was in accordance with the Statement of Community Consultation (SoCC), PA2008, the Infrastructure Planning (Environmental Impact Assessment) Regulations (as amended), TEN-E Regulation and appropriate best practice [APP-124, para 13.1.4].

THE COUNCILS

- 4.3.16 The Councils set out their response to the Planning Inspectorate's request for views on the Applicant's adequacy of consultation (AoC) [AoC-001]. They say *"It is the view of the 'Councils' (Kent County Council, Canterbury District Council, Dover District Council and Thanet District Council) that National Grid in accordance with the requirements of the 2008 Planning Act, has provided sufficient opportunity during the various stages of the pre-application process to provide feedback and comment as the development has evolved."*
- 4.3.17 There is considerably more detail provided covering non-statutory consultation and engagement and statutory consultation. The Councils confirmed that in their opinion the Applicant's duty to consult has been

²¹ Broad Oak Preservation Society describes itself as *"an unincorporated body whose membership extends to all residents of the village of Broad Oak"*. Further detail is provided in Section 5.2 of our report, provided in response to Q1.12.44

met²²; and they set out evidence to demonstrate why that is their opinion [AoC-001].

- 4.3.18 The AoC report states that the PEIR was consulted upon during the statutory consultation, which was completed to meet the requirements of PA2008²³ and the requirements of the TEN-E Regulations. The Councils confirm that they are satisfied that the statutory consultation was also completed in accordance with the SoCC, which itself had been the subject of consultation with the Councils and amendment based on their feedback [AoC-001].

ACCEPTANCE

- 4.3.19 This is also referred to in the response to Question 2.2 of the Richborough Connection Section 55 Application Checklist ('s55 Checklist') [PD-002]. The s55 Checklist notes that some concerns were raised about the adequacy of the consultation process. It also notes that there is evidence that SEW engaged during the statutory consultation process.
- 4.3.20 The s55 Checklist response concludes: *"While some of the issues raised have not been resolved, the applicant has had regard to consultation responses and the Planning Inspectorate does not consider they prevent the application proceeding to examination. Subject to agreement by the Examining authority, issues such as those raised on the proposal itself could be explored during the Examination; where parties and the applicant will have the opportunity to make their respective cases."*

THE PANEL'S CONCLUSIONS ON ADEQUACY OF CONSULTATION AND ENGAGEMENT

- 4.3.21 The ExA has considered all representations made during the Examination. However there is nothing in the evidence presented which persuades us to take a view contrary to that taken at acceptance (quoted earlier). We are persuaded by the confirmation in the Joint Councils' AoC report that they consider duties under the relevant sections of PA2008 have been met by the Applicant. The ExA is satisfied that the legal and policy duties were satisfactorily met in the matter of pre-application consultation²⁴ by the Applicant.
- 4.3.22 In terms of the Broad Oak reservoir proposal and other matters raised in the context of inadequate consultations such as effects on farming practices, there have been numerous opportunities for IPs to make representations during the Examination. In consideration of these representations, the ExA is satisfied that the legal and policy duties were satisfactorily met in the matter of pre-application consultation²⁵.

²² PA2008, s42 Duty to consult, s47 Duty to consult local community and s48 Duty to publicise

²³ PA2008, s42 to s49

²⁴ PA2008, s37, s42 and s47 and EN-1, para 4.2.2

²⁵ PA2008, s37, s42 and s47, and EN-1, para 4.2.2

Later in this chapter we conclude on the Applicant's duty under the consultation requirements of the EIA Regulations.

4.4 CONFORMITY WITH NATIONAL POLICY STATEMENTS

4.4.1 As detailed above, s104(4) requires the Secretary of State to determine the application in accordance with the relevant NPSs except to the extent that one or more of subsections (4) to (8) applies. This necessitates consideration of the proposed development against all the relevant policies in the relevant NPSs.

APPROACH TO DEMONSTRATING NATIONAL POLICY STATEMENT CONFORMITY

4.4.2 Under s104 the Panel must consider if applications are consistent with EN-1 and the relevant technology specific NPS²⁶. In its Planning Statement, the Applicant sets out how the application has addressed the national planning policy context [APP-127]. The Planning Statement includes at Appendix A 'Signposting for compliance with NPS EN-1'; and at Appendix B 'Signposting for compliance with NPS EN-5'. Both Appendices provide in tabular form, an overview of the assessment principles detailed in EN-1 and EN-5 and then in a separate column, the location in the application where these assessment principles are addressed.

4.4.3 SEW contends that the application *"has failed to ensure it is consistent with the instructions and guidance given in EN1"* [REP2-099, para 144]. As such, SEW states that the application is not in accordance with the NPS framework. SEW also finds that the application is not in accordance with EN-5 [REP2-099, para 186 to 197].

4.4.4 The Applicant set out clearly at the Landscape, Visual and Biodiversity Effects including Alternatives Issue Specific Hearing (the Landscape ISH) the position that it contends the application for the proposed development is in accordance with the NPS for the purposes of PA2008 s104(3); and SEW contends that it is not [EV-053; REP5-022, para 4.3.1 and REP5-041]. This position does not change during the Examination.

4.4.5 In the Panel's view, the Tables included in the Planning Statement clearly demonstrate the approach the Applicant has taken to ensuring its application addressed the principles set out in EN-1 and EN-5. Given this, we are satisfied with the approach the Applicant has taken to its consideration of the NPS assessment principles. The actual impacts of the proposal are considered in later sections of this report against those assessment principles.

²⁶ EN-1, para 1.1.3

4.4.6 However SEW and in some cases other IPs, also question the way in which the Applicant arrived at the scheme design during preparation of the application. We consider these below under two main headings:

- pre-application alternatives; and
- adequacy of the EIA process and the ES.

PRE-APPLICATION ALTERNATIVES

4.4.7 We received many representations from IPs contesting the way in which the Applicant had assessed alternatives. Some of these representations referred to the way in which the Applicant had determined the route during preparation of the application; other IPs questioned the separation of the landfall element of the Nemo Link[®] from the application and some the landfall location itself. We also received representations about alternative routeing and technologies within and outwith the Order limits and the route corridors; and about the way the Applicant has addressed lifetime costs.

4.4.8 The Applicant's Consultation Report states that a recurring theme during each stage of consultation was a desire for the connection to be underground or to change the location where the connection meets the Nemo Link[®] landfall [APP-124, para 13.1.3].

4.4.9 We decided, in light of the representations, that even though there is no general policy requirement in EN-1 to consider alternatives or to establish whether the project represents the best option, we should examine these matters in more detail, in light of EN-1²⁷ and EN-5²⁸ in order to understand the points made by IPs and to hear the Applicant's response. Further information has been provided by IPs and the Applicant during the course of the Examination. We have considered all representations submitted by parties on this topic, allowing the matter to be fully explored.

Overview and context

4.4.10 This section sets out the process adopted by the Applicant in its route optioneering. The pre-application routeing and connection studies which arrive at the preferred route are described in the ES [APP-029, Section 2.3 and 2.4].

4.4.11 The Strategic Options Report (SOR) (June 2013) [APP-130] describes the optioneering process that the Applicant undertook to identify strategic options to take forward that could provide the connection of the Nemo Link[®] to the high voltage transmission system. The SOR considered three onshore options and three offshore (subsea cable) options. All three onshore options considered different technologies; Alternating Current (AC) overhead line, AC underground cable and AC

²⁷ EN-1, para 4.4.2

²⁸ EN-5, para 2.8.7 to 2.8.9

gas insulated line (GIL). Although suggested through consultation, High Voltage Direct Current (HVDC) technology was scoped out of the SOR because it would require two additional converter stations which would not offer any benefits over AC cabling options.

- 4.4.12 The SOR concluded that an onshore connection between Richborough and Canterbury was the option which best met the Applicant's statutory duties and Government guidance. It was not the most economical of the options but, being of a shorter length (by about 30km) had less adverse effect in terms of landscape and biodiversity.
- 4.4.13 The RCS (June 2013) [APP-131] was undertaken to identify corridors which could potentially accommodate an overhead line connection between Richborough and Canterbury. Two were identified (the Northern and the Southern Corridors). The Northern Corridor followed the PX 132kV line, with three geographic sub-options at the western end [APP-059, Figure 5.4.2B]. The Southern Corridor followed a south westerly route from Richborough, approaching Canterbury substation from the western side of Fordwich.
- 4.4.14 There were also two scenarios; one retaining the existing PX 132kV line, installing the proposed 400kV line to the north or south of existing overhead lines and the second scenario which assumed removal of the PX 132kV line. The RCS concluded that the Northern Corridor option which included removal of the PX 132kV line performed the best when assessed against the anticipated environmental effects.
- 4.4.15 At the Canterbury end, it was concluded that further consideration should be given to two sub-options (A and B). Both sub-options crossed a strategic housing site, but B would have a lesser impact because it only interacted with a corner of the site. The Applicant also noted that it was aware of a longstanding proposal for a reservoir at Broad Oak in the general area of sub-option B. However the Applicant considered it would be technically feasible to deliver a connection in the sub-option B corridor without affecting delivery of the reservoir proposal; stating that it was in liaison with SEW.
- 4.4.16 The Preferred Connection Option and Route Corridor Report (PCORCR) (November 2013) [APP-132] considered whether the findings in the SOR and the RCS should be modified following a consultation exercise. Next steps involved a commitment to consider technology options including undergrounding and pylon options at the next stage.
- 4.4.17 The Connection Options Report (COR) (January 2016: first published May 2014) [APP-133] considered alternative alignments for an overhead line within the preferred route corridor, pylon design and whether use of underground cable technology would be appropriate. Five alignment options were considered [APP-133, Figure 1 (and 1A to 1D)]. Four were overhead (two comprised lattice pylons and two T-pylons) and the fifth was deemed to be the optimum alignment should undergrounding be considered appropriate.

- 4.4.18 For the purposes of the COR, the preferred route corridor was divided into four geographic sections (A to D - from west to east). An appraisal was undertaken, which the Applicant states was guided by the relevant policies in EN-1 and EN-5. The proposed draft route alignment ran north of the existing PX 132kV line in Sections A, B and D and south of the PX 132kV line in Section C. This was consulted upon and design changes incorporated as reported in Section 5.3 of this report.
- 4.4.19 A Pylon Design Options Report (PDOR) (January 2016) [APP-134] reported the appraisal of three pylon types; standard lattice, low height lattice and T-pylon.
- 4.4.20 A route options appraisal relating to the Broad Oak reservoir proposal was prepared. This considered a number of options for routing the overhead line through the area where the proposed development might interact or would be in close proximity to the reservoir proposal [APP-061]. This was submitted as part of the ES. It considers the advantages and disadvantages of four options. It concludes that by adopting Option C, the proposed development could co-exist with the reservoir proposal [APP-061, Section 6]. Chapter 6 of our report considers the matters raised during the Examination regarding the interaction between the proposed development and the Broad Oak reservoir proposal.
- 4.4.21 Design changes were incorporated in response to ecological surveys, requests to reduce effects on farming practices and proximity to buildings and ditches [APP-029, para 2.4.149 to 2.4.161]. Those requests not incorporated are also reported, with reasons. The only request which resulted in anything other than slight movement was in response to Natural England's (NE) concerns about potential adverse effects on habitat availability and displacement for breeding birds in Section D. The result was that the proposed 400kV overhead alignment was moved to the north of the retained PY 132kV line, whilst remaining within the route corridor and the Order limits.
- 4.4.22 We now turn to matters raised by IPs that relate to the alternatives considered by the Applicant.

Alternative landfall sites

- 4.4.23 The potential for alternative landfall sites is raised by a number of IPs, including the three East Kent MPs and Broad Oak Preservation Society (BOPS) in its RR, other submissions and its Deadline (DL) 8 submission [RR-021, RR-032, REP3-043, REP8-029]. In this representation, BOPS refers to documents which formed part of the application for the landfall site for the Nemo Link[®]. BOPS is of the view that an argument was carefully constructed to leave Richborough as the only possible landfall site.
- 4.4.24 The Applicant stated that planning permission was granted by the local planning authorities following applications made by the promoters of

Nemo Link[®]. Also that the Secretary of State for Energy and Climate Change (as was) has confirmed a compulsory purchase order for the necessary rights to implement the project after detailed consideration of grounds for choosing the Richborough site [REP2-016, response to Q1.7.31].

Conclusions on alternative landfall sites

- 4.4.25 The ExA agrees with the Applicant's case that the proposed development has to connect to the consented scheme; which is the landfall for the Nemo Link[®] at Richborough. Therefore our view is that the Applicant did not need to consider any landfall sites other than Richborough. We also note that the SOR reports that the Nemo Link[®] review of options determined Richborough was the most suitable converter station site given difficulties for cable routing and converter station siting at a number of other locations [APP-130, para 4.18].

Separation of landfall and consented Richborough substation from the application

- 4.4.26 Two IPs expressed concern about the separation of the landfall and Richborough substation and converter station elements from the DCO application [RR-076 and RR-032]. We asked the Applicant to address the points raised as part of Q1.7.31 [PD-006]. BOPS raised this again in more detail in its DL8 submission arguing that that the entire Nemo Link[®]/ Richborough scheme has not been subjected to scrutiny as a whole [REP8-029].
- 4.4.27 In essence, the Applicant explained that there was no basis on which the Nemo Link[®] and the related National Electricity Transmission System connection works could be the subject of a single application for development consent because the Nemo Link[®] is not an NSIP and could not therefore be authorised under PA2008. The Applicant's view is clearly that the works could not be considered 'associated development'²⁹ because the interconnector and the related Richborough connection are not subordinate to and necessary for the proposed development. They would be undertaken by separate legal entities, are subject to separate statutory authorisation and licensing requirements, and are subject to different development timescales. [REP2-016, Q1.7.31].
- 4.4.28 Furthermore the Applicant referred to the fact that the developer of the Nemo Link[®] would have been obliged to include in its EIA appropriate reference to cumulative effects that may arise from related development. The Applicant also considers that the Government recognises in EN-5 that single applications are not always possible and sets out the reasons why applications may need to be submitted and considered separately by the decision-maker.

²⁹ PA2008, s115(1)(b)

Conclusions on separation of landfall and consented Richborough substation from the application

- 4.4.29 The ExA agrees with the Applicant's reasoning. The Applicant is not compelled by PA2008 or the NPSs to include development such as the substation within its NSIP application. We agree this is not associated development and we accept the points made by the Applicant regarding the different legal entities, statutory authorisations and timescales. We are content that the reasons for the DCO application being separate are consistent with the examples posed in EN-5³⁰.

The technical feasibility of alternatives

- 4.4.30 In its DCO application, the Applicant presented the technical feasibility of options in a number of places, including the SOR, where technology options are appraised for each of the strategic options; the COR, the PDOR and the Applicant's Broad Oak Options.
- 4.4.31 The East Kent MPs, Kent County Council (KCC) and a number of other IPs argued that a subsea route would result in less harm on landscape and visual grounds and some suggest there is a viable undersea route from Zeebrugge (Belgium) to Kingsnorth (Medway Kent) or to the Isle of Grain [RR-021, RR-015, RR-032, RR-083, REP2-069, Q1.7.32]
- 4.4.32 In the SOR, the Applicant considered three subsea options. All three are ruled out at the SOR stage because of the potential adverse effects on a number of overlapping national and international ecological designations which could not be avoided and could result in direct impacts on habitats and species; and substantially greater costs [APP-130, para 12.29].

Conclusion on the technical feasibility of alternatives

- 4.4.33 The ExA is content with the justification that the Applicant has presented for not taking forward any of the subsea options that it appraised. As stated earlier, the ExA also agrees with the Applicant's case that the proposed development has to connect to the consented scheme, which is the landfall for the Nemo Link[®] at Richborough. Therefore our view is that the Applicant did not need to consider any subsea options from Richborough; nor did it need to consider any subsea options which would not have a landfall at Richborough.

Distribution-based network solution

- 4.4.34 Near to the end of the Examination, BOPS suggested that network reinforcement would be less disruptive and much cheaper. BOPS contends that the Applicant has not given due consideration to the option to upgrade the PX and PY 132kV lines to provide the connection for the Nemo Link[®]; and that a full technical evaluation should be

³⁰ EN-5, para 2.3.1 and 2.3.2

undertaken. BOPS refers to cross-arm technology that enables conductors to be carried at an increased height [REP8-029].

- 4.4.35 The Applicant explained that the pylon types on the existing 132kV lines are not suitable for operation at higher voltages because the pylons are not tall enough to achieve the necessary ground clearance. Also that a connection based on upgrading a 132kV route would not provide sufficient capacity for the export of Nemo Link[®] and serve local distribution demand during periods of maintenance, so both circuits would have to be switched off [REP9-001].

Conclusion on Distribution-based network solution

- 4.4.36 The ExA is content that the Applicant has given adequate reasons as to why network reinforcement in the form of improvements to the existing 132kV lines is not an alternative that exists for the connection that the proposed development would provide³¹.

Undergrounding and localised undergrounding options

- 4.4.37 Arguments for partial or complete undergrounding were presented by a number of IPs. There were also cases presented which claim that the Applicant had not given sufficient consideration to alternatives for undergrounding. It is the latter points which we consider here. The cases which argue for partial or complete undergrounding on the basis of adverse effects and/ or serious harm are considered in Chapter 5 and in Chapter 6.
- 4.4.38 SEW argues that it is not possible to follow the Applicant's argument on the landscape effects of undergrounding as presented in the COR. SEW considers that the COR is contradictory in its description of the potential effects (noting that the effects are described as 'not substantial', 'moderate-major adverse' and 'positive') making it unclear how the Applicant arrived at the conclusion of a moderate-major effect [REP2-099, para 74]. SEW considers a further review of the options should be undertaken which includes consideration of its suggested alternatives. The Applicant does not give a specific response to this point, but does direct to its responses to Q1.3.3, Q1.7.30 and Q1.7.45 [REP3-019, para 3.16]. In its response to Q1.3.3, the Applicant explained how it considers its approach to considering undergrounding to be in accordance with EN-5.
- 4.4.39 In responses to IPs which consider insufficient consideration has been given to undergrounding and alternatives, the Applicant refers to the reports we have précised above. Undergrounding by AC cable or GIL were both considered in the SOR for the four onshore options. None of the underground options were taken forward to the next stage. The reasons, which are option-specific, include:

³¹ EN-5, para 2.8.10

- potential adverse construction stage landscape and visual effects and longer term effects due to tree and hedgerow loss;
- direct and indirect adverse heritage effects on settings of heritage assets and unidentified archaeology;
- adverse ecological effects including habitat loss and impacts on designated sites and hydrology; and
- pollution impacts during construction; and
- cost [APP-130].

- 4.4.40 As a result of consultation responses calling for undergrounding, the Applicant appraised an underground option in the COR. The findings in this regard were that in relation to the criteria set out in EN-5³² there was not sufficient justification for any undergrounding within any section of the route [REP2-016, Q1.7.30].
- 4.4.41 In response to a request from SEW, the Applicant set out the technical parameters of underground cables which were considered in the COR [APP-061, Section 4.2]. The Applicant also explained some of the impacts which could arise from laying underground cables such as the requirement for wide swathes of land during construction, and a 25m width swathe being required for the duration of the life of the underground cables. Other impacts would include restrictions on building, excavating, mounding and planting over the cables and within 3m of the trenches and cable sealing end (CSE) compounds³³ and surfaced roads at the interface between overhead lines and underground cables.
- 4.4.42 The Applicant provided a response to SEW's suggested alternatives. Whilst we are not considering these here, but later in Chapter 6; the document contains photographs of buried cable installation and a CSE, which are generic and relevant to the points above [REP3-019, Appendix 5, insets 4.3 to 4.8].
- 4.4.43 BOPS pointed out that some of the impacts such as those cited above disappear if HVDC technology is used because a narrower trench is required. BOPS refers to the Western Link which runs down the Wirral Peninsula using HVDC technology to a converter station. BOPS refers to land near Canterbury North substation it thinks could be used for a converter station [REP8-029]. The Applicant pointed out that this would not be appropriate here, as the converter station location at Richborough has already been consented as part of the Nemo Link[®] application [REP4-014 Q2.7.15].
- 4.4.44 In terms of localised undergrounding, there are a number of locations where suggestions are made. We report on these in the topic chapters of our report in terms of whether we consider the harm is significant

³² EN-5, para 2.8.9

³³ A CSE compound comprises an overhead line terminal pylon set within a relatively flat area (nominally 100m X 60m) surrounded by security fencing. The compound would contain cable terminations, electrical equipment, support structures and a small control building.

and therefore whether we consider the proposed development in these locations is in accordance with the NPSs. The locations are:

- BOPS' suggestion for undergrounding from Pylon PC13 westwards to Canterbury North substation, considered in Section 5.2;
- the diamond cross, over south of Monkton³⁴ and considered in Sections 5.2, 5.3 and 5.4 of our report.

4.4.45 Two of the three specific alternatives put forward by SEW in the vicinity of the Broad Oak reservoir proposal are underground options. We consider the matter in relation to the potential for co-existence of the proposed development with the reservoir proposal in Chapter 6.

Conclusions on undergrounding and localised undergrounding options

4.4.46 We agree with SEW that the COR explanation of landscape effects of undergrounding in Section A (which includes the land associated with the proposed reservoir) of the proposed route alignment is confusing. We cannot find anything in the Applicant's responses which clarifies this. However, we note that whilst there do appear to be contradictory statements in the COR; para 7.57 of the document explains that the moderate-major adverse effect relates specifically to sensitive features including ancient woodland at Lynne Wood, orchards and hedgerows. The Applicant explains that undergrounding in this location would result in the permanent loss of portions of these features [REP2-016, response to Q1.7.45]. We also note from the ecology section of the COR that the effect of undergrounding on ancient woodland is described as high adverse [APP-130, para 7.223].

4.4.47 Whilst we find the lack of precision in the COR unfortunate, we do not agree this leads to the need for a review of options including the suggested alternatives made by SEW. The COR does not rule out undergrounding on the basis of adverse effects it may have on the landscape. Rather, it assesses the potential adverse effects of an overhead line on the landscape to establish if such effects would be sufficiently serious to trigger the need to consider undergrounding³⁵.

4.4.48 The ExA is content that the Applicant has provided the information to demonstrate how its assessment does not conclude serious concerns about potential adverse landscape and visual effects, but has explained the social, environmental impacts, technical difficulties and costs that would be associated with non-overhead pre-application alternatives³⁶. We are therefore content that the Applicant's pre-application process with regards undergrounding is sound. We address the matters raised with regards the concerns about predicted effects

³⁴ The 'diamond cross-over' is the term used to describe the location on Monkton Marshes where the new 400kV overhead line would need to pass over the retained PY 132kV line, also involving temporary diversion of the PX 123kV line prior to its dismantling and removal

³⁵ EN-5, para 2.8.8

³⁶ EN-5, para 2.8.8 and 2.8.9

from the proposed development which might also trigger the need for undergrounding in Chapters 5 and 6 of our report.

Consideration of the Broad Oak reservoir proposal during pre-application

- 4.4.49 SEW argued that the Applicant failed to consider pre-application alternatives properly which would have avoided a detrimental effect on the Broad Oak reservoir proposal [REP2-099, para 44]. It notes that the Broad Oak reservoir proposal is not mentioned in the SOR [REP2-099, para 62].
- 4.4.50 The Applicant enclosed email information from SEW to demonstrate it knew about the Broad Oak reservoir proposal over six months before publication of the SOR. It says that it was taken into consideration at the time along with relevant technical, environmental, socio-economic and cost information gathered from the discussions with the potentially affected local authorities [REP3-019, para 3.4 to 3.5].
- 4.4.51 SEW argued that the RCS has failed to have adequate regard to the Broad Oak reservoir proposal and the impact the proposed development would have on it. Specifically, that the conclusion that Northern Corridor sub-options A and B are finely balanced in terms of advantages and disadvantages, makes no appraisal of impacts on the proposed reservoir, when the RCS stated that there was an awareness of sub-option B crossing land associated with the reservoir proposal [REP2-099, para 51 to 61].
- 4.4.52 The Applicant argued that it was correct to treat the Broad Oak reservoir proposal in the RCS as a long standing aspiration of SEW's [REP3-019, para 3.9]. In response to First Written Questions (FWQ), the Applicant explained that following on from the RCS, if areas of particular sensitivity require an underground cable solution this would be addressed in the detailed design stage of the process [REP2-016, Q1.3.3]. As the environmental appraisal showed little differentiation between sub-options A and B, the Applicant went forward to public consultation with the two sub-options in the Northern Corridor [APP-131, Section 8].
- 4.4.53 In coming to a view on which of the two sub-options to take forward, as noted earlier, the Applicant acknowledged the existence of the reservoir proposal. The Applicant gave weight to the fact that Canterbury City Council (CCC) had identified a strategic site as a proposed housing allocation at Sturry/ Broad Oak. Sub-option B was taken forward because it would only interact with a corner of the strategic site whereas sub-option A would result in the proposed overhead line across the centre of the site [APP-132, para 21]. The Applicant stated that none of the representations received during the consultation period have led it to conclude an alternative solution would be preferable [APP-132, para 6.12]. However part of SEW's case is that it did not input to this consultation and the engagement

between the two parties did not take place prior to sub-option B being taken forward.

- 4.4.54 SEW is also of the opinion that the alternatives considered in the EIA process and ES are inadequate because the outcome of the high level alternatives considered by the Applicant in the SOR might have had different results (longer route crossing land of lesser environmental significance) if the Applicant had appreciated impacts such as the loss of the ability to deliver the Broad Oak reservoir proposal [REP2-099, para 219].
- 4.4.55 As described earlier, the Applicant considers it has met the requirements of the NPS³⁷ and the EIA Regulations with regards to providing information on alternatives [REP5-022, para 4.1.1 to 4.1.4].

Conclusions on the consideration of the Broad Oak reservoir proposal during pre-application

- 4.4.56 We have noted that there is no reference to the Broad Oak reservoir proposal in the SOR [APP-130]. We also note that the socio-economic activity appraisal covered in the SOR for the onshore options is at a very high level, mentioning general areas of economic and tourism assets. The only development mentioned that is proposed, is one which it is shown in the ES gained planning permission in June 2013 (the same month that the SOR was first published).
- 4.4.57 With regards the omission of any reference to the Broad Oak reservoir proposal in the SOR, the Applicant has provided evidence that it knew about the proposal at the time of the SOR preparation. We can see no named reference to any other proposals in the SOR. We are therefore content that the absence of a mention of the Broad Oak reservoir proposal was consistent with the level of detail being provided and note that the Applicant says it was considered. The ExA is content in this regard that the lack of named reference to the Broad Oak reservoir proposal does not constitute inadequacy in terms of the Applicant's appraisal of alternatives.
- 4.4.58 The ExA is satisfied that the Applicant based its decision on which sub-option to take forward on the level of detail about other proposals (strategic site and reservoir proposal) which was available at the time. We come to this view having considered the arguments presented by SEW regarding the comparative weight which it considers should be attributed to the Water Resources Management Plan 2014 (WRMP14) when compared with the emerging Local Plan (for CCC). We specifically asked CCC about why the land SEW argues would be required for the proposed reservoir was not allocated or safeguarded, to which CCC responded *"Proposals for a reservoir were not at a sufficiently advanced stage when the Local Plan was prepared and*

³⁷ EN-1, para 4.4.1

therefore could not be allocated/ land safeguarded." [REP4-022, Q2.3.38].

- 4.4.59 In coming to this view, we also give weight to the next stage that the Applicant undertook in evolving its design, which based on feedback from SEW, was to conduct a separate study to identify design options for the proposed 400kV overhead line in the vicinity of the Broad Oak reservoir proposal. This was in the Applicant's opinion, to ensure that both projects could proceed without constraining each other [REP2-016, Q1.3.3]. By this time, we note that the Applicant and SEW were working more closely together, with more information about the reservoir proposal being shared. The Applicant finessed its overhead alignment in the vicinity of Broad Oak based on the appraisal of its four options [APP-061].
- 4.4.60 With regards to the point made by SEW on ES inadequacy, National planning guidance states in relation to alternatives in ESs that *"Where alternative approaches to development have been considered, the Environmental Statement should include an outline of the main alternatives studied and the main reasons for the choice made, taking into account the environmental effects"*. It does not suggest that every alternative available should be subject to assessment.
- 4.4.61 The ExA does not agree with SEW's argument that had the reservoir proposal been considered in the SOR this could have led to a different outcome in terms of strategic routeing. We are content that the matters appraised to predict environmental effects at this stage of route optioneering were high-level environmental and socio-economic baseline factors; and did not include future development proposals that lacked certainty of delivery.
- 4.4.62 In further support of our opinion, we note that the RCS does make mention of the Broad Oak reservoir proposal. It includes more specific reference to land-uses than the SOR and takes account of planning policy in terms of Local Plan designations. We think it is consistent that the reservoir proposal was considered at RCS stage but not in the SOR. The ExA therefore is content that EIA process and ES are adequate in this regard as well as the consideration of alternatives.
- 4.4.63 Having concluded this matter here, we now report that we are satisfied with the manner in which the Applicant has considered and reported the alternatives that were taken into account in preparing the design which was submitted as the application. We do not conclude on matters raised with regards the concerns about predicted effects from the proposed development which might trigger the need for post-application alternatives to be considered in Chapters 5 and 6 of our report.
- 4.4.64 We cannot conclude on matters which relate to SEW's case that the detriment would be serious because it would be unable to deliver the proposed reservoir or on SEW's suggested alternatives until such time

as we have considered the case over whether the two proposals could co-exist.

Lifetime costs

- 4.4.65 A number of IPs including the three MPs for East Kent consider that lifetime costs have not been adequately considered; and if considered would show that undersea cables such as one from Zeebrugge to Kingsnorth would result in highly cost effective options [RR-021]. Kent County Council (KCC) also felt there was a need for further detail on lifetime costs in its argument for undergrounding. This point remained outstanding in the final Statement of Common Ground (SoCG) between the Applicant and KCC [REP8-014, ID5.1.1], in spite of the Applicant's response to FWQ, which sets out where the information can be found [REP2-016, Q1.7.30]. BOPS questioned the Applicant's lifetime costings for underground cable provision; and raised this again towards the end of the Examination [REP2-077, Q1.7.32 and REP8-029].
- 4.4.66 The Applicant confirmed that as set out in detail in the SOR, the economic appraisal of strategic options included comparative assessments of the total lifetime costs [REP2-016, Q1.7.41]. The options appraisal identified that the most economic and efficient solution for electricity consumers, would be based on a connection at Richborough. Lifetime cost estimates for options assessed are presented in the SOR [APP-130, Figure 12.2]. From this it is clear that the selection of technology has a greater bearing on the cost outcome than the alignment.
- 4.4.67 The ES provides a summary of the options considered in the SOR. Table 2.3 provides capital and lifetime costs for the overhead, underground and subsea options assessed. It shows that the subsea options would cost substantially more than the onshore options. As mentioned in reporting subsea options above, it was not only cost which were determining factors [APP-029, para 2.4.12 to 2.4.13 and Table 2.1]. From this it also clear that although the overhead option from Richborough to Kemsley is estimated to incur the greatest capital costs (but higher lifetime costs, amounting to a marginally cheaper figure than for Richborough to Canterbury), it is not selected as the preferred option because of adverse landscape and biodiversity effects [APP-029, para 2.4.14 to 2.4.17].

Conclusions on lifetime costs

- 4.4.68 Although IPs raised general concerns regarding the Applicant's lifetime costs, no evidence to counter the actual SOR estimates or methods using in generating those estimates was presented. The Applicant set out its reasons for opting for the preferred alignment. It has also answered questions and provided signposting to where this information can be found. The ExA is satisfied that sufficient information for the consideration of the strategic alternatives which included the commercial feasibility with capital and lifetime costs, as

well as environmental, social effects and technical feasibility has been provided³⁸.

ADEQUACY OF THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS AND THE ENVIRONMENTAL STATEMENT

Overview and context

- 4.4.69 EN-1 requires all proposals for projects that are subject to the EIA Directive must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project³⁹. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended by the Infrastructure Planning (EIA) (Amendment) Regulations 2012 (the EIA Regulations) set out the information for inclusion in an ES in Schedule 4 Parts 1 and Part 2.
- 4.4.70 We consider the matters raised by IPs over the adequacy of the EIA process and of the ES during the Examination. We conclude on each matter and on the overall adequacy where we can at this stage. Where issues required further consideration such as that relating to environmental effects which are reported later, we signpost to the relevant chapter of our report.
- 4.4.71 The Applicant notified the Secretary of State that it proposed to provide an ES in respect of the proposed development; and requested the Secretary of State's opinion as to the information to be provided in the ES (the Scoping Opinion)⁴⁰. The proposed development is EIA development in accordance with the definition set out in Regulation 4(2)(a) of the EIA Regulations.
- 4.4.72 The Applicant submitted a Scoping Report with its letter describing the proposed scope of the EIA to be reported in the ES and accompanied the request to the Planning Inspectorate for a Scoping Opinion under Regulation 8(1) of the EIA Regulations. The Secretary of State consulted the prescribed consultees and other IPs, took account of the consultation responses received and of the specific characteristics of the project and the environmental features likely to be affected, as described by the Applicant, before adopting a Scoping Opinion.
- 4.4.73 A copy of the Scoping Opinion, dated 18 September 2014 is included in the application [APP-056] together with the Applicant's responses to it [APP-057]. The Secretary of State welcomed the proposed consultation with relevant consultees, including SEW and stated that the ES should explain how comments from such bodies have been taken into account [APP-056, para 3.56].

³⁸ EN-1, para 4.4.2

³⁹ EN-1, para 4.2.1

⁴⁰ Letter from National Grid Electricity Transmission plc on 11 August 2014, in accordance with regulations 6(1)(b) and 8(1) of the EIA Regulations

4.4.74 We first report the main challenge to the adequacy of the Applicant's EIA process and ES as set out by SEW. We then consider opinions provided by the Councils, the Environment Agency (EA) and Natural England (NE) on some aspects of this matter.

South East Water's position

4.4.75 The adequacy of the Applicant's EIA process and of the ES⁴¹ was questioned by SEW during the Examination. The central matter was whether the Broad Oak reservoir proposal had been considered properly. SEW argues that the Applicant had failed to undertake the EIA and pre-application process properly and consistently; and failed in its duties to complete an adequate EIA process and ES [REP2-099, para 210 to 225 and 252].

4.4.76 The question of the degree to which the Applicant had considered the reservoir proposal and hence the adequacy of the process and the ES emerged through a number of different arguments in SEW's RR, WR and subsequent submissions, summarised as follows:

- failure to address the Planning Inspectorate Scoping Opinion with regards to undergrounding [REP2-099, para 214 to 217];
- failure to engage appropriately with SEW [REP2-099, para 50 to 89 and para 219];
- failure to consider alternatives and the need for changes to the application and further environmental information [RR-014, REP2-099, para 219 to 220 and para 226 to 229];
- failure to consider the impact on the reservoir proposal in the assessment on the water environment and socio-economic and visual effects [REP2-099, para 221 to 222 and 224 to 225]; and
- failure to include the proposed reservoir in the cumulative impact assessment generally and with regards landscape and visual effects and collision risk for birds [REP2-099, para 218, 223 to 224 and para 187].

The Scoping Opinion regarding undergrounding

4.4.77 SEW refers to 'the Planning Inspectorate's Scoping Opinion', which it quotes (the Panel notes that this in fact is the Secretary of State's Scoping Opinion [APP-056]). SEW contends that the Applicant has failed to address the matter raised in the Scoping Opinion; namely that of undergrounding; firstly in any part of the route of all the initially considered alignments; and secondly "*specifically within the the Broad Oak and Reservoir Land area.*" [REP2-099, para 214 to 217].

4.4.78 SEW refers [REP2-099] to paragraph 2.42 of the Scoping Opinion [APP-056], which states that it would be helpful to understand why an underground option was not considered for all the potential alignments

⁴¹ EN-1, Section 4.2 and the EIA Regulations

set out in the COR. SEW also quotes the stated expectation in the Scoping Opinion [APP-056, para 2.43] that the ES should demonstrate consideration of options and an explanation of where options were not adopted; that would mitigate significant visual impacts, which would potentially result from the proposed development⁴² [REP2-099, para 214 to 217].

- 4.4.79 In its response to SEW's WR the Applicant explains that the COR included four overhead line alignments and one underground (cable) option [REP3-019]. This has been described earlier in this chapter.
- 4.4.80 The Applicant argued it is not appropriate to assess an underground cable option for each alignment, because an underground cable route could not necessarily follow the same alignment as an overhead line route [REP3-019, para 6.25 to 6.26]. This is because underground cables would affect environmental constraints differently; for example sensitive habitats and areas of high archaeological interest can be oversailed by an overhead line⁴³.
- 4.4.81 The ExA is satisfied with the explanation given by the Applicant as to why undergrounding was not considered for all the four alignments that are set out in the COR. This is because it is clear that of the four overhead options under consideration, differences in pylon type accounted for two options. We therefore agree that it is not necessary to consider undergrounding for the four options. We are also persuaded by the Applicant's explanation that an underground alignment would have different environmental effects to overcome and therefore the most appropriate alignment for an underground cable would not necessarily match that of an overhead alignment. The ExA is therefore content that the Applicant has answered the Secretary of State's Scoping Opinion request for an explanation of the alternatives considered⁴⁴.
- 4.4.82 In the matter of adequately considering undergrounding in any part of the route of all the initially considered alignments, the ExA is satisfied that the Applicant's consideration of undergrounding as set out in the ES meets the minimum requirements set out in Schedule 4, Part 2.
- 4.4.83 However in terms of the potential need for partial undergrounding as a result of landscape and visual effects, we discuss this matter further in Section 5.2 of our report and in relation to the potential for co-existence between the proposed development and the reservoir proposal in Chapter 6 of our report.

⁴² EN-5, para 2.8.4

⁴³ Earlier in this Chapter under the Section on 'Undergrounding and localised undergrounding options' we have reported the impacts that the Applicant has considered when appraising undergrounding options

⁴⁴ EN-5, para 2.8.4

Engagement with South East Water for the purposes of environmental impact assessment

- 4.4.84 Earlier in this chapter, we have reported matters raised with regards to pre-application consultation and engagement. SEW argues that the ES and EIA processes are inadequate and that because the Applicant failed to engage with SEW it failed to appreciate the fact that the proposed development and the Broad Oak reservoir proposal would be incompatible [REP2-099, para 219].
- 4.4.85 The ExA does not accept that the consultation with SEW was inadequate for the reasons set out earlier in this chapter. We are content that the consultation and engagement undertaken were appropriate and proportionate for the EIA process and ES preparation.

The suggested need for further environmental information

- 4.4.86 Another point made in SEW's case that the Applicant's ES is inadequate is that SEW considers the adoption of any one of its three suggested alternatives could secure co-existence of the proposed development with the Broad Oak reservoir proposal. They are put forward as feasible means of delivering the proposed development which would not (in SEW's view) give rise to the same significant effects on SEW's ability to deliver the proposed reservoir [REP2-099, para 219 to 220 and para 226 to 229].
- 4.4.87 SEW argues that there would be a need for further environmental information, should the SEW alternatives be considered. There is a difference of opinion between the Applicant and SEW over what timescale would be required to provide this environmental information [REP3-019, Section 7 and REP4-042, para 73 to 77]. This varies between 21 weeks (SEW) and 12 months (the Applicant).
- 4.4.88 As the SEW alternatives are part of the case which relates to the interaction of the proposed development with the Broad Oak reservoir proposal; and the Applicant's position regarding the need for consideration of alternatives is that the projects can co-exist, we conclude on this matter in Chapter 6 of our report. We agree that further information could be needed if any of the SEW alternatives are to be considered.

Visual effects

- 4.4.89 SEW also claims that the Applicant has failed to assess visual impacts adequately. SEW considers that the ExA needs to see additional photomontages [REP2-099, para 224 and 225 and REP5-009, ID3.4]. The Applicant disagrees. As the arguments relate to the need for photomontages for views from the north of the proposed development generally without the reservoir, ones to illustrate screening of the reservoir and for photomontages of the SEW alternatives, this difference of opinion is considered in Section 5.2 and Chapter 6 of our report.

Assessment of effects on the water environment

- 4.4.90 SEW's case over inadequacy of the ES also covers the Applicant's assessment of the water environment [REP2-099, para 221]. The case is based on SEW's opinion that the two proposals could not co-exist, which we cover in Chapter 6 of our report.

Assessment of socio-economic and recreation effects

- 4.4.91 SEW challenges the adequacy of the Applicant's socio-economic and recreation assessment. It quotes the Applicant's ES Non Technical Summary at [APP-028, para 2.11.11] as follows "*.... all committed development[s] or planned developments identified would be able to continue to be developed alongside the Proposed Development*" [REP2-099, para 222]. SEW's case is that this is not true because the reservoir proposal could not be implemented.
- 4.4.92 However in the socio-economic assessment of future land-uses in the ES, which considers how the proposed development could affect future potential and proposed development in the wider area it is stated that an assessment of route options in the vicinity of the proposed reservoir has been undertaken and is included [APP-030, para 15.14.2]. This is another point which relates to the difference of opinion between the Applicant and SEW over the potential for the two proposals to co-exist. We conclude on the potential for the two proposals to co-exist in Chapter 6 of our report.

Cumulative effects

Overview and context

- 4.4.93 Advice Note 17⁴⁵ sets out the Planning Inspectorate's recommended approach for the assessment of cumulative effects. The advice note highlights that assessments should be proportionate and not be any longer than is necessary to identify and assess any likely significant cumulative effects. It suggests that applicants agree the list of projects for cumulative assessment with the local authorities and states that "*For 'other development' falling into Tier 3, the applicant should seek to provide assessment where possible, although this may be at a very high level.*"
- 4.4.94 The Applicant has provided an assessment of cumulative effects in Chapter 16 of the ES [APP-030], the scope of which was agreed with the local authority. It identifies the Broad Oak reservoir proposal as a Tier 3 project, but scoped it out of its cumulative effects assessment (CEA)⁴⁶. The Applicant explains why the Broad Oak reservoir proposal

⁴⁵ Cumulative effects assessment relevant to nationally significant infrastructure projects. Dec 2015. <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/12/Advice-note-17V4.pdf>

⁴⁶ Different IPs use different terms such as cumulative assessment, assessment of cumulative effects, cumulative impact assessment. Unless quoting, we shall use cumulative effects assessment (CEA) in our report

was scoped out of the CEA [APP-029, Table 5.3 and REP3-019, para 6.3 to 6.16]. The Applicant points out that the scope of projects for assessment was a matter of agreement with the Councils in the first SoCG [REP2-024, ID4.31].

4.4.95 In essence, the Applicant's reasons for scoping out the reservoir from CEA includes:

- although the proposed reservoir is in the WRMP14, there is no certainty it will come forward or receive planning permission;
- insufficient details of final design, including size - but acknowledgement that conceptual design had taken place;
- it falls into Tier 3 development (other plans and programmes)⁴⁷;
- information was not in the public domain at the time the CEA was undertaken;
- SEW would need to consider the cumulative effects of the proposed development (if consented) with the proposed reservoir; and
- it follows guidance⁴⁸ [REP3-019, para 6.3 to 6.16].

South East Water

4.4.96 SEW sets out its position in its WR, which is that the Applicant has failed to consider the Broad Oak reservoir proposal in its CEA; so has not considered the environmental impact of both developments operating at the same time [REP2-099, para 223]. SEW cites bird collision risk as an example, which we report on later in this section.

4.4.97 SEW responds [REP4-042, para 65 to 70, REP4-049 Q2.3.28, REP5-009] that:

- the amount of information available about the reservoir was increasing⁴⁹ and the CEA process is iterative and may need repeating⁵⁰;
- even though it is a Tier 3 project there is more than enough information to facilitate an effective CEA;
- the approach does not reflect current EIA guidance;
- at the time of scoping out, the Councils had anticipated that a way would be found for both developments to co-exist; and
- the Councils also noted concerns about the impact of the proposed development on the reservoir proposal in the SoCG [REP2-024, ID5.1.2] and in the Joint Councils' LIR [REP2-061, Section 7.13], even though they agreed to it being scoped out.

⁴⁷ PINS Advice Notes 9 and 17

⁴⁸ DCLG (2006). Environmental Impact Assessment: A guide to good practice and procedures – A consultation paper. This consultation paper was archived in 2010 and is replaced by the Planning Practice Guidance on EIA (<https://www.gov.uk/guidance/environmental-impact-assessment>). Both documents relate to the Town and Country Planning Regulations rather than the Planning Act 2008.

⁴⁹ The Table in SEW's WR [REP2-099, para 70] lists the Jacobs studies commencing in May 2014. These were concept studies on the interaction between the two proposals and landscape and ecology visions for the reservoir

⁵⁰ PINS Advice Note 17

- 4.4.98 Following on from points made at the first Broad Oak ISH on 29 July 2016, we asked the Applicant if it planned to submit any 'other information'⁵¹ in relation to likely significant cumulative effects of the proposed development and the proposed reservoir. The Applicant confirmed it did not. It also re-stated its position that it did not think it appropriate to undertake a CEA of the two projects because, if consented, the proposed development would be fully operational as part of the baseline in existence by the time an EIA for the Broad Oak reservoir proposal was completed [REP4-014, response to Q2.3.32].
- 4.4.99 The Applicant's position does not change as stated at the first Broad Oak ISH "*cumulative assessment does not include long term projects that may or may not be the subject of an application in the future where there is uncertainty over the proposals. To the extent that this is a correct view, National Grid then believes that its ES is adequate and covers the likely significant effects of the proposed development. As SEW is currently uncertain of what size of reservoir it would seek consent for, does not have the design work ready for the whole reservoir, or certainty on its future plans for recreational use, that is why, in effect, it is not possible to cumulatively assess the likely significant effects.*" [REP3-017, para 2.68].
- 4.4.100 More detail about the potential for the two proposals to co-exist was explored at the Broad Oak ISHs. This is reported in Chapter 6. For the purposes of the disagreement over the cumulative effects, we note that SEW has concerns about the ability for the proposals to co-exist in terms of top water level flexibility between 32.5m AOD and 36.0m AOD, other aspects of the reservoir infrastructure including a fish pass, the Sarre Penn stream diversion channel and biodiversity mitigation.
- 4.4.101 SEW produced a table that set out its opinion of the cumulative impacts, proposed mitigation measures and residual effects that would arise from a cumulative assessment of the proposed development and the Broad Oak reservoir proposal, based it said, on Advice Note 17 [REP4-051].
- 4.4.102 The Applicant provided a Table which gave an explanation of the potential for operational stage CEA and what, if any, cumulative effects there could be for a range of EIA topic receptors. It found there is no potential for cumulative effects. The Applicant stated that the information submitted did not change its primary position that it was not necessary to include the Broad Oak reservoir proposal in any CEA for the proposed development's EIA [REP4-015, Appendix C].
- 4.4.103 SEW set out in a Table the EIA topics from the Applicant's table which it considered would result in cumulative effects [REP5-039, Table 1]. SEW criticised the topic receptor approach in the Applicant's Table

⁵¹ As defined in Regulation 2 of the EIA Regulations

because it felt conclusions did not reflect the mitigation that would be integral to the reservoir proposal to meet stated objectives and statutory duties eg for biodiversity [REP5-039, para 15].

- 4.4.104 SEW quoted from the Scoping Report for the proposed development as follows: "*The South East Water reservoir scheme north of Broad Oak will need to be considered in terms of potential cumulative indirect effects during the operational period*", arguing that the Applicant indicated an intention to consider the proposed reservoir [REP5-039, para 6]. We asked the Applicant for a response as the Scoping Report does not form part of the Examination [EV-056, action point 19].
- 4.4.105 The Applicant explained that the projects for inclusion in the CEA were reviewed with the local authorities on a regular basis, taking into account the stage the projects had reached in the planning process, level of information and likely timing [REP6-009, Appendix I]. The Applicant previously pointed out what it considered to be an important footnote in the NPS⁵², relating to land-use effects, which it stated SEW has failed to include in its case. The footnote in relation to proposed land-uses states "*for example where a planning application has been submitted*" [REP3-019, para 6.33 to 6.34].
- 4.4.106 The Applicant demonstrated the ongoing nature of the review process by referring to the updated SoCG with the Councils, in which it has been agreed that additional projects should be included in the CEA [REP6-009, Appendix I]. The Applicant submitted an update to Chapter 16 of the ES as an ES addendum at DL6. This included the additional projects agreed in the SoCG, but did not include the Broad Oak reservoir proposal [REP6-018].
- 4.4.107 One area of agreement between both parties is that there are no likely effects of a cumulative nature arising for the construction stage because, as currently proposed, the construction stages of the two projects would not overlap [REP4-014 response to Q2.3.30].

Environment Agency

- 4.4.108 The EA's initial position with regards the cumulative effects of the proposed development with the Broad Oak reservoir proposal is set out in its first SoCG with the Applicant and its WR [REP2-020, ID4.1.1 and REP2-059] and in a post hearing note that we requested after the first Broad Oak ISH.
- 4.4.109 The EA considered that the Applicant "*should have assessed the environmental effects of the proposed Broad Oak Reservoir cumulatively with those of the Richborough Connection Project.*" The EA stated that this is because the Broad Oak reservoir proposal is an important strategic supply option identified within SEW's WRMP14. The EA considered such an assessment would ensure that construction of

⁵² EN-1, para 5.10.5

the proposed development would not be pursued in a way which might prevent the future construction of the proposed reservoir by precluding necessary mitigation under relevant legislation⁵³ [REP3-039].

- 4.4.110 The EA set out further detail on its design principles for the Sarre Penn realignment and fish pass as comments on SEW's WR. On the Sarre Penn realignment, the EA said "*Our design principles for the realignment are not a prescription that must be followed but a set of guidelines that need to be implemented to produce a geomorphologically and so ecologically sound design.*" The comments set out hydromorphological quality elements against which the river can be assessed. The EA continued "*The realignment must be designed and built so that, with respect to these elements, it is at least as good, if not better, than the existing course of the Sarre Penn.*" It refers to the initial geomorphological assessment of the river carried out by Jacobs⁵⁴ and stated "*This should be updated as work on mitigation for the reservoir progresses.*" With regards ecology, the EA states "*The new course of the river must support a similar mix of fish species at similar densities and its invertebrate populations must be as diverse and high scoring as they are at present.*" [REP3-039]
- 4.4.111 On the fish pass the EA said "*At its simplest, the fish pass must function to permit the passage of a range of species of fish.*" The EA explained that the design of the fish pass would need to be determined by characteristics of the existing river and species mix and then sets out a set of design factors including gradient, velocity, number and position of resting places, materials, vegetation and maintenance. The EA explained that all fish proposed passes must be presented to the EA's Fish Pass Panel (FPP) which assesses and approves fish pass designs. The EA explained "*SEW has discussed their plans for the proposed fish pass with representatives from the FPP. To date, there has been general agreement with SEW's ideas, however, there are still a number of elements to agree and so there is no approved fish pass design...The FPP will review plans again when the top water level and so the crest height of the fish pass is known and more detailed designs produced.*" [REP3-039]
- 4.4.112 Throughout its submissions, the EA encouraged the Applicant and SEW to work together to establish whether the proposed reservoir's mitigation measures would remain feasible.
- 4.4.113 The Applicant stated "*The points being made by SEW and the Environment Agency (EA) relate to the interaction between the two projects and whether the Richborough Connection project would put the reservoir proposal at risk. This does not relate to cumulative impact assessment in the context of EIA.*" [REP4-014, Q2.3.32].

⁵³ Water Framework Directive, Salmon and Freshwater Fisheries Act 1975, Water Resources Act 1991 (as amended) and the Eels Regulations 2009

⁵⁴ Jacobs Stage 1a Report [REP2-121]

- 4.4.114 The Panel asked whether there were any exemptions to the WFD which might apply. The EA responded by explaining that the WFD does provide an exemption in Article 4.7 for specific activities that would result in failure of the status or potential 'health' of a waterbody to improve or that may cause the 'health' of a waterbody to deteriorate. For Article 4.7 to apply, conditions relating to the River Basin Management Plan and need for the development must also be met. The EA did not consider Article 4.7 could apply. It stated that if any work is proposed that is likely to cause SEW to implement plans that cause failure of a waterbody to achieve good 'health' or failure to prevent deterioration of the 'health' of a waterbody, then it is the EA's role to require the developers to prepare a solution that does not cause either situation to occur [REP4-024, Q2.3.36].
- 4.4.115 In response to the points raised by the EA, the Applicant considers that Article 4.7 of the WFD would provide a mechanism by which the Broad Oak reservoir proposal could be delivered, even if the requirements of the WFD were not met. It is the Applicant's view that with sufficient support for the proposed reservoir project from SEW and the EA, Article 4.7 criteria could be met. The Applicant contends that even in the absence of the proposed development, there is significant uncertainty regarding SEW's proposals and its impact on the water environment, and so it is not possible categorically to state that Article 4.7 cannot apply to the reservoir proposals [REP5-012, Q2.3.36].
- 4.4.116 In the final SoCG between the Applicant and the EA [REP8-013] there are two matters outstanding, which relate to cumulative effects. Firstly the EA does not agree that the effects on the water environment, in relation to the WFD status of the Sarre Penn⁵⁵ during the operational or construction phase, can be scoped out of the CEA.
- 4.4.117 The Applicant's position is that in the absence of an identified impact from the proposed development during the operational phase, it follows that there would not be a cumulative impact associated with any other development. It considers the EA's position to be more nuanced in the specific instance of the WFD status of the Sarre Penn, in suggesting that the proposed development could affect SEW's ability to deliver a reservoir that would comply with the requirements of the WFD. However, the Applicant maintains that this in itself is not a cumulative impact. It restates its position that SEW would still be able to deliver a reservoir, including mitigation that meets the requirements of the WFD, by adapting its concept design where appropriate to take into account the new overhead line [REP8-013, ID4.1.1 and REP8-016, para 4.1.6 to 4.1.7].
- 4.4.118 Secondly, based on the information available, the EA considers that it is likely that a WFD compliant scheme can be designed and

⁵⁵ Existing stream (see Chapter 6 for more detail)

implemented for the Broad Oak reservoir proposal. But, as currently proposed, the EA believes that the proposed development would prevent necessary mitigation required for the reservoir under the WFD and therefore cause non-compliance with the WFD. The EA strongly advises the Applicant and SEW to work together to explore a solution that would enable successful completion of both schemes and allow the proposed reservoir to secure WFD compliance.

- 4.4.119 The EA confirmed that if as a consequence of the proposed development the proposed reservoir cannot achieve WFD compliance, SEW could potentially rely on Article 4.7 as a defence to non-compliance, given the public interest in the provision of drinking water supply. The Applicant agreed, but questions how a conclusion can be drawn regarding the likelihood of a WFD compliant scheme in the absence of a Preliminary WFD Compliance Assessment (which it understands had been prepared but not submitted to the Examination) [REP8-013, ID4.2.1].

The Councils

- 4.4.120 We asked KCC and the three District Councils if agreement had been reached on what is a reasonably foreseeable development to be included in the cumulative impact assessment (CEA). KCC and the three District Councils confirmed that they had; and referred back to the SoCG and the LIR [REP2-063, REP2-065, REP2-067 and REP2-069, Q1.12.34]. The LIR notes that both KCC and CCC wish to ensure that there is no unacceptable conflict between the proposed development and the Broad Oak reservoir proposal; and urge the ExA to take account of SEW's objections [REP2-061, para 7.13.2].
- 4.4.121 In the final SoCG between the Applicant and the Councils under the heading 'cumulative effects' there was agreement between the Applicant and the Councils over the ES Addendum, which had added in some new projects, but not the Broad Oak reservoir proposal [REP8-014, ID4.31.2]. This item of the SoCG is dated 26 October 2016, which we note is well over two weeks after DL5 (7 October 2016), when SEW had submitted further arguments regarding cumulative effects.
- 4.4.122 The final SoCG between the Applicant and the Councils acknowledges SEW's sustained objection and in it, CCC urges the ExA to take account of SEW objections to ensure that there is no unacceptable conflict between the two organisations' proposals [REP8-014, ID5.1.2].

Natural England

- 4.4.123 SEW was concerned that a statement in NE's final SoCG [REP6-011, ID3.5.11] with the Applicant could be misinterpreted. It says "*Natural England does not have any comment on the Richborough Connection Project in respect of the proposals by South East Water.*" SEW sought confirmation itself from NE. The response was submitted as email

documents in two submissions. SEW wanted it to be clear to the Panel that NE has not assessed the interactions between the proposed development and the Broad Oak reservoir proposal. In the email response to SEW, which was submitted, NE confirmed that it has not assessed the interaction. NE stated it considers that to be a matter to be resolved between the Applicant and SEW [REP7-30 and REP7-040].

4.4.124 The ExA notes the clarification made in the exchange of emails.

Panel's reasoning and conclusions on the cumulative effects

4.4.125 The ExA agrees that the Broad Oak reservoir proposal is a Tier 3 project. The ExA considers the Applicant was justified in scoping out the Broad Oak reservoir proposal from its CEA on the basis of the level of detail of information available at the time and the level of uncertainty about the reservoir proposal.

4.4.126 We agree with SEW, that there was more detailed information emerging in the form of the Jacobs reports at the time that the Applicant was preparing the ES. However, whilst providing detail of interaction between the two proposals and visions for some elements of mitigation, these reports did not provide sufficient certainty regarding the scheme design for the purposes of CEA.

4.4.127 Indeed one of SEW's points made strongly at the first two Broad Oak ISHs was its need for flexibility. This was in terms of proposed reservoir capacity and geographic extent for the proposed water body itself, the associated infrastructure including the diversion channel and the fish pass; and for the biodiversity mitigation that would need to be delivered. SEW made it very clear, that it needed the flexibility to be able to take forward designs for a proposed reservoir with top water levels of 32.5m AOD, 36.0m AOD and any level in between.

4.4.128 We are of the opinion that there was so much uncertainty, despite the existence of concept plans, that the Applicant's ability to achieve a robust CEA that included the Broad Oak reservoir proposal would be compromised by the lack of precise details on which to conduct the CEA. This is our view even taking account of the Rochdale Envelope approach, to which SEW refers in its listing of the cumulative effects it considers would arise from the proposed development and the reservoir proposal.

4.4.129 In reaching this view, we have considered each of the EIA topics that the Applicant and SEW listed and disagreed upon with regards to whether there is potential for cumulative effects [REP4-051, REP4-015, Appendix C and REP5-039]. We also took note of SEW's criticism of the topic-based approach which the Applicant adopted. We do agree that these topics are all pertinent to the question of whether the two projects can co-exist. We do not agree that the level of detail available to the Applicant at the time was commensurate with being able to undertake a CEA because of the detailed nature of the potential interactions, information on which was not available at the time.

- 4.4.130 We do not agree with SEW's contention that future users of the proposed reservoir should be identified as receptors in the CEA for the proposed development. Therefore during the Examination, we felt it was correct to address this matter by concentrating on specific areas of dispute which have been identified and can be developed, to establish the potential for the co-existence. We feel this reflects the view of the Councils in the final SoCG, which urges the Applicant to work with SEW so that there would be no unacceptable conflict between the proposals.
- 4.4.131 The ExA takes note of the EA's views about the Broad Oak reservoir proposal's importance as a strategic supply option identified within the SEW's WRMP14. We have considered the EA's arguments in detail regarding the need for the Applicant's CEA to include the reservoir proposal. We also note and give weight to the importance that the EA places on the CEA it considers necessary; specifically being able to ensure that construction of the proposed development is not pursued in such a way which may prevent the construction of the proposed reservoir by precluding necessary mitigation.
- 4.4.132 We have also noted the various design parameters which the EA has set out as important factors for the fish pass and the Sarre Penn realignment; and the EA's requirement for more work to be undertaken to update the mitigation proposals and for a detailed design of the fish pass. From the amount of detail which the EA considered was still required at the start of the Examination, we consider that there is legitimacy to the Applicant's position that there was insufficient detail on which to base a CEA.
- 4.4.133 We have also reflected on the Applicant's view that the interaction between the two proposals and whether the proposed development would put delivery of the reservoir proposal at risk is not the same as the need for CEA.
- 4.4.134 We reported the EA's position at the end of the Examination with regards the possible use of Article 4.7 of the WFD exemption. We note its relevance to the cases being made. However we do not rely on that to come to our view about whether the Applicant should have included the reservoir proposal in its CEA.
- 4.4.135 As with the arguments set out by SEW, the ExA concludes that the Applicant was correct to scope out the Broad Oak reservoir proposal from its CEA. This is because when we consider the detailed design that the EA sets out as still necessary to be undertaken, we are of the opinion that the Applicant would have had to make so many assumptions in its CEA; that the robustness of the assessment would be in doubt.
- 4.4.136 However we do not underestimate the importance the EA attributes to establishing through consideration of further details of the design of the reservoir and its mitigation, whether the two proposals could co-exist. Our examination of this is covered in Chapter 6 of our report.

- 4.4.137 Similarly, we also note that CCC (the district in which the Broad Oak reservoir proposal is located) is keen to ensure that SEW's objections are taken into consideration and that conflict between the two proposals can be resolved. We also note the Councils' agreement in the SoCG with cumulative effects, including that update to the Applicant's CEA. The ExA considers this is in line with the guidance which indicates CEA may need to be an iterative process⁵⁶.
- 4.4.138 The ExA considers that the view of the Councils reinforces the opinion we have concluded above in response to the cases put by both SEW and the EA. This is that there is a difference between the need for cumulative effects arising from the proposed development and the Broad Oak reservoir proposal to have been assessed; and the specific areas of dispute which have been identified and can be developed, to establish the potential for the co-existence. The potential for co-existence was explored in considerably more detail and is reported in Chapter 6 of our report.
- 4.4.139 There were also two specific points over which SEW considered the ES to be inadequate, these are: the landscape effects on Blean Woods Special Landscape Area (SLA) and the need or otherwise for collision risk assessment (CRA) to assess the cumulative effects of bird mortality with the Broad Oak reservoir proposal.

Blean Woods Special Landscape Area

- 4.4.140 SEW argued that the Applicant's ES does not assess the significance of effect on the Blean Woods SLA and that the Applicant scoped this receptor out of the ES by undervaluing its status [REP2-099, para 218 and REP4-049, Q2.7.5, REP5-009]. The Applicant argued that the proposed development does not directly affect the SLA as it lies outside the Order limits, but that it was considered in the ES as it falls within the study area. The Applicant confirms its ES assessment that the SLA has local value, is correct, which results in minor adverse significance arising from the low indirect effect on the SLA [REP5-009, item 3.1].
- 4.4.141 The parties continued to disagree at the second Broad Oak ISH. SEW linked its case to the need for consideration of cumulative effects [EV-030, REP5-020 and REP5-040]. In the topic based SoCG prepared in connection with the Broad Oak reservoir proposal, the Applicant explains the differences in response to SEW's comments regarding the comparative assessment of the adjacent Broad Oak Landscape Character Area (LCA). These are that the Blean Woods SLA already has overhead lines in this area (400kV and 132kV) and would not be directly affected by the proposed development. Whereas there would be a direct effect on the Broad Oak LCA. This is because the proposed overhead line cross the LCA along a different alignment from the PX

⁵⁶ PINS Advice Note 17

132kV line, introduces overhead infrastructure into a part of the LCA where there is currently none, giving rise to a marked change in the landscape [REP5-009, ID3.1].

- 4.4.142 The ExA is content with the Applicant's explanation of the way it has assessed the Blean Woods SLA. The ExA does not consider this results in any inadequacy in the Applicant's ES.

Bird collision risk

- 4.4.143 SEW argues the Applicant's ES neither meets the NPS⁵⁷ requirements nor the EIA Regulations⁵⁸ because appropriate weight has not been given to the Broad Oak reservoir proposal in considering the potential for bird collision risk [REP2-099, para 187]. A substantial amount of evidence is presented in this regard from both SEW and the Applicant. The evidence is used over adequacy of the ES, failure to comply with EN-5 and as justification by SEW for the two underground SEW alternatives.
- 4.4.144 Whilst both parties agree that large water bodies have the potential to attract birds in high numbers, the fundamental positions over the adequacy of the ES do not change. SEW's contention is that it would be possible to carry out a meaningful CRA and that one should have been undertaken to include potential cumulative effects from the proposed reservoir [REP2-099, REP2-201, REP3-031, REP5-009, REP5-028, REP5-041, REP5-027, REP7-038].
- 4.4.145 The Applicant agrees that it would be possible to undertake an assessment, but this would not be robust for a number of reasons. These include the limited level of data available, particularly when assessing a proposed reservoir in a changing agricultural landscape in 20 to 30 years' time; and the lack of information on flight paths/ corridors of birds moving into or out of the wetlands towards the proposed reservoir location, in the area recorded in the Applicant's bird surveys [REP3-019, REP4-014, REP5-009 REP5-020].
- 4.4.146 We asked NE if it had any further views following the submission of SEW's WR. NE responded "*Large reservoirs are known to attract large birds such as geese and swans which have a known strike risk on power lines. However the ornithological conservation implications of the strike risk and its management methods are uncertain at this stage. Additionally, It [is] improbable that meaningful results from monitoring the possible future impacts of the Broad Oak Reservoir scheme could be achieved.*" [REP4-028, Q2.2.31].

⁵⁷ EN-5, Section 2.7

⁵⁸ Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended by The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012), Schedule 4, Part 1

- 4.4.147 Initial concerns from SEW about collision risk for birds from European sites⁵⁹ are not sustained. This is reported in Chapter 7 of our report.
- 4.4.148 In light of the response from NE, the ExA is satisfied that the Applicant's arguments regarding the difficulties of achieving a robust CRA are valid because of the uncertainty with the data that are currently available, the challenges of predicting effects so far into the future and the fact that the current surveys do not report flight paths in the area. We therefore consider the Applicant's ES to be adequate in the way in which bird collision risk has been assessed; and also in meeting EN-5⁶⁰.

Conclusions on cumulative effects

- 4.4.149 We have considered the opinions of IPs who have commented upon whether the Applicant was correct to scope out the Broad Oak reservoir proposal from its CEA. Taking those opinions into account with our understanding of the level of detail which was available when the Applicant undertook its ES, the ExA has concluded that the Applicant was right to scope the Broad Oak reservoir proposal out of the CEA. In considering this, the Councils set a distinction between a need for the CEA and a need for collaboration to ensure the two proposals could exist. We agree that there is a difference, and accordingly we examined the potential for co-existence in much greater detail during the Examination. This is reported in Chapter 6 of our report.
- 4.4.150 Other matters raised by SEW in terms of adequacy of the Applicant's ES assessment of visual, socio-economic and recreation and water environment effects are not concluded here, but covered later in Section 5.2 and Chapter 6 of our report.

Panel conclusions on the adequacy of the environmental impact assessment process and the Environmental Statement

- 4.4.151 The ExA has been able to reach conclusions on some elements of the opinions stated about the EIA process and the ES at this stage. For other points, it is necessary to consider matters further as part of the Panel's consideration of ES topics and the Broad Oak reservoir proposal. These conclusions serve to indicate on which points we have concluded at this point of the report, and which are considered further in our report; and where. Our overall conclusion on EIA process and ES adequacy is therefore contained in Chapter 8.
- 4.4.152 The ExA is satisfied that the concerns that SEW had with regards the Scoping Opinion comments in the matter of the number of

⁵⁹ The term European sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), and Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

⁶⁰ EN-5, para 2.7.3

underground routes considered in the Applicant's COR have been adequately addressed by the Applicant's explanation; and do not amount to any inadequacy in the EIA process or the ES. Our consideration of the adequacy of the Applicant's assessment of the need for undergrounding in the Broad Oak area is not concluded here, but is covered in Section 5.2 of our report and Chapter 6.

- 4.4.153 The ExA is satisfied that the engagement which the Applicant undertook with SEW is adequate for the purposes of the EIA process. This has been concluded earlier in this chapter.
- 4.4.154 The ExA is satisfied that the Broad Oak reservoir proposal was not included in the SOR because at that stage of route optioneering matters appraised to predict environmental effects were high-level baseline environmental and socio-economic assets, which did not include future development proposals which lacked certainty of delivery. We do not agree with SEW's contention that this omission constitutes inadequacy in the EIA process.
- 4.4.155 The ExA agrees with SEW that if any of the SEW alternatives are to be considered; further environmental information could be needed. The differences over the potential for the two proposals to co-exist and thus the need or otherwise for the SEW alternatives is reported in Chapter 6.
- 4.4.156 The ExA considers SEW's arguments for new photomontages and inadequacy of the Applicant's visual assessment further in Section 5.2 regarding general views from the north towards the proposed overhead line and in Chapter 6 regarding the request for photomontages for screening and of the SEW alternatives.
- 4.4.157 SEW's case on the inadequacy of the Applicant's ES assessment of the water environment is based on SEW's opinion that the two proposals could not co-exist, which we cover in Chapter 6 of our report.
- 4.4.158 SEW's challenge over the inadequacy of the Applicant's ES socio-economic and recreation assessment is based on its opinion over the threat to delivery of the reservoir proposal and that the two proposals could not co-exist, which we cover in Chapter 6 of our report.
- 4.4.159 The ExA concludes that the Applicant was right to scope out the Broad Oak reservoir proposal from its CEA. We have taken into account views from a number of IPs (the Councils, the EA, NE and SEW) and a considerable amount of evidence in coming to this conclusion. The main reason is the degree of uncertainty surrounding the details of the proposed reservoir design and its infrastructure and mitigation available at the time of ES preparation coupled with our opinion that the potential for co-existence of the two proposals must be considered further in light of emerging detail about the reservoir proposal, a point emphasised by IPs. We give weight to the fact CCC, the EA and NE all called for the two parties to work together towards a solution whereby

the proposed development and the reservoir proposal could co-exist. This is reported further in Chapter 6.

- 4.4.160 The ExA is content with the Applicant's explanation of the way it has assessed the Blean Woods SLA and that this is adequate for the purposes of EIA process and the ES.
- 4.4.161 The ExA does not consider that CRA and cumulative effects on bird mortality from the proposed development and the reservoir proposal could be predicted with sufficient certainty. We are therefore content that the Applicant's assessment is adequate for the purposes of EIA and its ES.

CONCLUSIONS ON COMPLIANCE WITH THE NPS

- 4.4.162 We have concluded on assessment matters as they have been discussed in this chapter. We have indicated which matters are concluded here, and which are covered further under NPS topics and implications for the Broad Oak reservoir proposal. Our final conclusions on compliance with the NPSs are therefore contained in Chapter 8 of our report.

5 FINDINGS AND CONCLUSIONS ON POLICY AND FACTUAL ISSUES

5.1 INTRODUCTION

5.1.1 This chapter considers the Panel's approach to identifying the Principal Issues and then we proceed to consider each issue in turn and our conclusions in relation to them. We do not deal with matters in relation to the effect of the application on the Broad Oak reservoir proposal; these matters are discussed in Chapter 6. Compulsory Acquisition and the Development Consent Order are dealt with in Chapters 9 and 10 respectively.

THE MAIN ISSUES IN THE EXAMINATION

5.1.2 The Panel's initial assessment of Principal Issues prepared in accordance with s88 of PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 was published with the letter inviting all Interested Parties (IPs) to the Preliminary Meeting [PD-004]. The Panel had regard to the application documents, EN-1 and EN-5; relevant DCLG guidance together with Relevant Representations (RRs) submitted by IPs. At the Preliminary Meeting, the Panel made it clear that the list of principal issues was not intended to be exclusive [EV-011].

5.1.3 The Principal Issues were presented in alphabetical order. The main topic headings were as follows:

- Air Quality including Dust;
- Biodiversity and Geological Conservation;
- Broad Oak;
- Compulsory Acquisition;
- Draft Development Consent Order;
- Historic Environment;
- Landscape and Visual;
- Noise and Vibration;
- Socio-Economic Effects;
- Traffic and Transport; and
- Water Issues.

5.1.4 The Panel heard representations at the Preliminary Meeting about the list of Principal Issues including those related to the scope of the Broad Oak Principal Issue, alternatives and the Broad Oak reservoir proposal [EV-011].

5.1.5 We have considered the effects of the proposed development on Broad Oak village at relevant sections of this chapter; we discuss alternatives in Chapter 4, 5 and 6 and as far as the Broad Oak reservoir proposal is concerned, we took the view that this should be considered in a discreet chapter due to the nature of the effects which might occur sometime in the future following construction of the proposed

development, should the Order be made. As such, we discuss this matter in Chapter 6.

5.1.6 The Panel's findings and conclusions in relation to many of the Principal Issues are set out in this Chapter. Some important and relevant matters identified during the course of the Examination do not fall under the broad headings of the Principal Issues. We have therefore included Good Design as a discreet topic area and referred to other topics within the section on Other Matters. All written and oral representations, even if not explicitly mentioned, have been fully considered in reaching the Panel's conclusions.

5.1.7 Topics are dealt with in turn as set out below:

- Landscape and visual effects;
- Good design;
- Socio-economic;
- Biological and ecological;
- Noise and Vibration and EMFs;
- Traffic and transportation;
- Water quality and resources and flood risk;
- Heritage Assets;
- Air quality; and
- Other Matters

5.2 LANDSCAPE AND VISUAL EFFECTS

INTRODUCTION AND POLICY CONTEXT

Introduction

5.2.1 This section reports on the landscape and visual effects; and alternatives as they are relevant to landscape and visual effects as set out in the National Policy Statements (NPSs). The landscape and visual aspect was identified generally as a principal issue in our initial assessment, as reported in the ExA's Rule 6 letter [PD-004]. Those points identified in the assessment of principal issues, as well as others raised during the Examination, are reported below. The Applicant's Environmental Statement (ES) presents the assessment of landscape and visual impacts separately in two chapters [APP-029, Chapters 6 and 7].

5.2.2 The overall legal and policy context is set out in Chapter 3 of our report. It cross references the relevant legislation to this section of our report.

Organisation of this report section

5.2.3 This section of our report is organised as follows:

- policy context;
- the application, including updates to the ES;
- landscape and visual methodologies;

- alternatives, as they relate to landscape and visual effects;
- key matters raised along the proposed route;
- long distance footpaths and trails;
- mitigation and enhancement; and
- overall conclusions in relation to landscape and visual effects.

5.2.4 This section does not repeat the findings described in Chapter 4 of our report in so far as they relate to alternatives, nor does it consider in any way matters that relate to the Broad Oak reservoir proposal, which are covered in Chapter 6 of our report.

National Policy Statements

5.2.5 Overarching NPS for Energy EN-1(EN-1) requires the Applicant to carry out a landscape and visual assessment for construction and operation stages of the proposed development and report it in the ES⁶¹.

5.2.6 Whilst virtually all nationally significant energy infrastructure projects will have effects on the landscape, the aim should be to minimise harm to the landscape; having regard to siting, operational and other relevant constraints, providing reasonable mitigation where possible. Factors to be taken into account when judging impact on a landscape include existing character of local landscape, its current quality, how highly it is valued and its capacity to accommodate change⁶².

5.2.7 EN-1 requires the decision-maker to judge if any adverse impact on the landscape would be so damaging as not to be offset by the benefits, including the need⁶³. The extent to which impacts are temporary or reversible should also be taken into account⁶⁴.

5.2.8 Mitigation measures as a means to reducing the effects of a project such as reduction in scale, appropriate siting or design and landscape schemes are encouraged⁶⁵ and there may be appropriate locations for offsite planting to mitigate distant views⁶⁶.

5.2.9 EN-1 establishes that as well as legislative requirements for considering alternatives there are some policy requirements; landscape and visual effects being one such policy requirement⁶⁷. NPS for Electricity Networks Infrastructure, EN-5 sets out requirements for the Applicant's assessment, including the need to consider undergrounding and mitigation including alternatives in terms of

⁶¹ EN-1, para 5.9.5 to 5.9.7

⁶² EN-1, para 5.9.8

⁶³ EN-1, para 5.9.15

⁶⁴ EN-1, para 5.9.16

⁶⁵ EN-1, para 5.9.21 to 5.9.23

⁶⁶ EN-1, para 5.9.22 to 5.9.23 and EN-5, para 2.8.11

⁶⁷ EN-1, para 4.4.1 to 4.4.2 and para 5.9.10

routeing, technology and support structures and guidance provided by the Holford Rules^{68, 69}.

- 5.2.10 EN-5 refers specifically to the fact that overhead lines and associated infrastructure can give rise to adverse landscape and visual effects and that mitigation can be achieved for the most part, but in particularly sensitive locations the potential adverse landscape and visual impacts may make it unacceptable in planning terms⁷⁰.

National Planning Policy Framework

- 5.2.11 The National Planning Policy Framework (NPPF) establishes that the planning system should contribute to conserving and enhancing the natural environment, which includes planning positively for green infrastructure networks, giving weight to conserving landscape and scenic beauty in designated landscapes and encouraging good design.

THE APPLICATION AND UPDATES

The Applicant's Environmental Statement

- 5.2.12 The Applicant undertakes the assessment on a temporal basis assessing impacts during construction, operation, lifetime (15 years after the proposed 2021 completion date) and decommissioning stages of the proposed development⁷¹. Assessment of cumulative effects is presented in ES Chapter 16. During the Examination the Applicant provided ES Consolidated Errata and Changes documents, which amongst other things contain some updates to wording used in some of the assessment of landscape and visual impacts. The final ES Consolidated Errata and Changes Document was submitted at Deadline (DL) 7 [REP7-015]. Cumulative landscape effects are included [REP6-018].
- 5.2.13 The landscape chapter is supported by a landscape methodology [APP-074] and background data on published landscape character assessments [APP-075], landscape character field survey sheets and landscape figures [APP-037]. The visual chapter is supported by a visual methodology [APP-078], a document setting out the Holford Rules and visual amenity principles [APP-079], visual impact assessment tables [APP-080] (which were updated by [REP2-011]) and methods for producing photomontages [APP-081]. Figures provided in support include plans and photomontages [APP-038 to APP-045]. Further photomontages (of new locations and showing trees that would be removed) were submitted at the request of the Panel [REP2-045, REP2-046 and REP3-020] and a photograph from St Peter's Church Tower in Sandwich was also provided [REP5-023].

⁶⁸ A series of planning guidelines relating to the visual amenity of high voltage transmission lines, an overview of which is set out in EN-5

⁶⁹ EN-5, para 2.8.4 to 2.8.10

⁷⁰ EN-5, para 2.8.2

⁷¹ EN-1, para 5.9.6

The Embedded Environmental Measures Schedule

- 5.2.14 An Embedded Environmental Measures Schedule (EEMS) [APP-063] was submitted with the application and updated during the Examination to include additional information requested by the Panel, the final version of which was submitted at DL7 [REP7-016]. In tabular form, it ties in effects identified in the ES to mitigation, delivery mechanisms, the relevant DCO requirement and the discharging authority. The EEMS is organised by work number and pylon reference (proposed for installation, diversion and removal). There is also a section which sets out the effects by ES topic as a summary of all environmental measures proposed.
- 5.2.15 The EEMS therefore specifies the locations for mitigation planting, works to trees and hedgerows, maintenance regimes and any landscape or biodiversity-specific activities required. It provides a checklist for mitigation works which are described in more detail in the Biodiversity Mitigation Strategy (BMS) [REP7-017] and the Construction Environmental Management Plan (CEMP) [REP7-018].

The Biodiversity Mitigation Strategy

- 5.2.16 The final BMS [REP7-017] forms part of the final CEMP [REP7-018]. Earlier versions were submitted with the application and have been updated during the Examination in response to comments from the Panel and IPs. The CEMP would be a certified document under Requirement 5 (R5) of the recommended DCO (rDCO). The BMS describes the proposed ecological mitigation required pylon-by-ponylon. It includes site-specific and species-specific method statements. The information is keyed onto plans which cover the entire proposed 400kV overhead line and parts of the 132kV PX line proposed for removal. Much of the work controlled and delivered through the BMS is required for landscape and visual mitigation as well as for biodiversity mitigation.

The Concept Mitigation Planting Plan

- 5.2.17 The Concept Mitigation Planting Plan (CMPP), submitted in response to Q1.7.60 [PD-006 and REP2-014] sets out one possible arrangement for all the embedded mitigation planting, which would be an integral part of the proposed development and has been included in the assessment of effects in the ES [REP5-011, Section 1]. The CMPP explains that the planting is designed to adopt an integrated approach to achieve mitigation for arboricultural, biodiversity, heritage, landscape and visual effects. It is explained that in many instances the planting would deliver mitigation for more than one of the effects [REP5-011, Section 2].
- 5.2.18 The essence of what is contained in the CMPP is secured through R8 of the rDCO, which requires a planting scheme to be submitted to the relevant planning authority for approval prior to that particular stage of the works commencing. R8 of the dDCO states that the planting

scheme must accord with the Arboricultural Impact Assessment (AIA) and the BMS and reflect the CMPP [REP7-003]. During the Examination the Applicant simplified references to different planting types in R9 of the dDCO to just 'mitigation planting' [REP7-009, para 4.65 and REP7-005, ref 8].

- 5.2.19 During the Examination, Kent County Council (KCC) expressed concern at what it felt was a detailed, yet formulaic approach in the CMPP in its response to Q2.2.36 [REP4-026], referring to comments it had made at DL3 [REP3-040, Appendix 1]. KCC provided detailed suggestions for the content and presentation of the drawings, to which the Applicant responded [REP4-019, Appendix A]. We also felt that the plans would benefit from more obvious geographical locations being identified. The Applicant submitted a revised CMPP [REP5-011] at DL5. Discussions between the Applicant and KCC continued [REP5-046] and the Statement of Common Ground (SoCG) submitted at DL8 between the Applicant and the Councils confirms that parties have reached agreement on the approach adopted in the CMPP, bearing in mind it is an indicative document, following minor re-wording to R8 of the dDCO [REP8-014, ID4.3.8].
- 5.2.20 Following a request from KCC, the Applicant amended R8(1) of the dDCO [REP7-003] to specify that the planting scheme to be submitted to the relevant local authority that must accord with the BMS and the AIA 'reflects' the CMPP. Other minor changes were made to R8 of the dDCO following suggestions from IPs and the Panel, which provided clarification on the content of the planting scheme to be submitted for approval.
- 5.2.21 The ExA is satisfied that the level of detail shown on the CMPP is now appropriate for the purpose for which it is intended and that its inclusion in R8 of the dDCO description of the planting scheme for future approvals secures the intent contained within the CMPP. We are also satisfied that the simplification to refer only to mitigation planting in R9 of the dDCO is correct.

The Landscape and Habitat Enhancement Scheme

- 5.2.22 The Landscape and Habitat Enhancement Scheme (LHES) shows planting enhancements which the Applicant intends to deliver, outside the Order limits, subject to landowner approvals [APP-123]. The LHES is presented by the Applicant as enhancements, undertaken as compensatory measures as set out in the NPS⁷² and therefore its delivery is not required in order to mitigate adverse effects and it has not been relied upon for the assessment in the ES [APP-029, para 3.7.8 to 3.7.10].

⁷² EN-5, para 2.8.11

- 5.2.23 The commitment to deliver the LHES is set out in the Applicant's s106 agreement⁷³ with the Councils, an engrossed version of which was submitted at DL9 [REP9-001, Appendix 2]. Schedule 2 of the s106 agreement establishes the process by which the LHES delivery scheme would be approved by the relevant planning authorities and for any changes that might be necessary to agree a 'Replacement LHES'⁷⁴. There were some queries from the Councils during the Examination as to the detail of the process, but these were resolved as evidenced by the engrossed s106 agreement.
- 5.2.24 We asked the Applicant to submit updates on how many landowners had expressed interest and signed up to the LHES. The final submission at DL8 shows that out of the 36 licences required, all landowners have been contacted, 12 landowners had agreed in principle and eight had rejected the proposals [REP8-017, Appendix A]. One face-to-face meeting had been held between the Applicant and landowners, but at DL8 no licences had been sent out or returned completed [REP8-017, Appendix A].
- 5.2.25 Given that some landowners have rejected the proposals, the process for approving a 'Replacement LHES' would be triggered. We are satisfied that the approval process is set out in the LHES.

THE JOINT COUNCILS' LOCAL IMPACT REPORT

- 5.2.26 The Joint Councils' Local Impact Report (LIR) states that adverse visual and landscape effects would be experienced over an extensive area much of it within characteristically open and expansive landscape settings which have little topographic backgrounding or screening [REP2-061, Section 7.1]. It also states that there would be adverse visual impacts on the Saxon Shore Way long distance footpath. The LIR refers to the Councils' SoCG with the Applicant which includes landscape and visual matters agreed and not agreed [REP2-024], the final version of which was submitted at DL8 [REP8-014].

LANDSCAPE METHODOLOGY

The Applicant's case

- 5.2.27 The Applicant sets out its landscape assessment methodology in the ES [APP-029, section 6.8] and in more detail in an Appendix [APP-074]. The Applicant states that its method for prediction of effects is in accordance with the 'industry standard', which is set out in the Landscape Institute and Institute of Environmental Management and Assessment Guidelines to Landscape and Visual Impact Assessment 3rd edition (GLVIA3)⁷⁵.

⁷³ s106 of the Town and County Planning Act 1990 (as amended)

⁷⁴ Replacement LHES means any replacement to the original Landscape and Habitat Enhancement Scheme, as defined in the s106 agreement

⁷⁵ EN-1, para 5.9.5 refers to GLVIA3's predecessor

5.2.28 The Applicant's assessment determines the significance of the predicted effects on the landscape receptors through a process which combines desk and site studies with professional judgement. The assessment is organised by reference to the geographic Sections A to D running west to east through the study area. The assessment establishes the baseline conditions and describes the key components of the proposed development relating to the assessment. Significance of effect is established through a series of steps including assessment of susceptibility to change and value which give landscape sensitivity and magnitude of effect. Magnitude of effect derives from scale, geographic extent, duration, reversibility and whether the effect is adverse or beneficial. The significant effects are summarised and inter-related effects and cumulative effects described [APP-029, Table 6.14 and para 6.13.8 to 6.13.16, APP-030, para 16.4.95 to 16.4.97].

5.2.29 We established from responses to Q1.7.1 that there were no IPs who fundamentally disagreed with the Applicant's method of landscape assessment, but there were disagreements about the way the methodology had been applied. These are considered in the parts of this section of our report which follow.

Kent County Council's views

5.2.30 From the start of the Examination, KCC objected to the proposed development on the grounds of the imposition of the overhead line into the landscape [RR-038 and REP2-024, ID5.2.1]. Part of KCC's case is that the application of the landscape (and visual) methodology has led to an underassessment of the significance of adverse effects, which in turn KCC considers makes a case for undergrounding. This position does not change by the end of the Examination. The Applicant disagrees. The matters not agreed in the final, signed SoCG are considered below [REP8-014, ID5.2.1]. A further point made by KCC also argued that there was a lack of transparency in the application of professional judgement during the assessments. (This point also applies to the visual methodology). KCC's position did not change by the end of the Examination.

5.2.31 The Applicant disagreed with KCC's position. Areas of disagreement between parties include the following matters which are discussed in turn below [REP8-014, ID5.2.1]:

- (a) Difference between the sensitivity judgements in the application documents;
- (b) Assessment of the Ash Level;
- (c) Geographic extent of landscape effects;
- (d) Construction effects; and
- (e) Application of professional judgement.

(a) Difference between the sensitivity judgements in the application documents

- 5.2.32 Matters were raised regarding what appeared to be inconsistencies between the assessment that was contained in the ES and those in the Connection Options Report (COR) [APP-133]. Following the Applicant's response to Q1.7.4 [REP2-016] and further points from KCC [REP3-040] the Applicant responded at DL4 by submitting its Briefing Note LA08. It also provided a Briefing Note in response to the Deadline 3 Submission from KCC. This states that judgements on the sensitivity of landscapes set out in the published character assessments are generic and not specific to any type of development [REP4-019, Appendix A].
- 5.2.33 The Applicant argued that it has fine-tuned the criteria for establishing sensitivity based on the proposed development's characteristics. This means that the ES assessment differs from that in the COR because the emphasis of the ES is to assess the impacts of the overhead line which forms the application on the landscape with which it interacts. This contrasts with the published documents, the assessments in which reflect development generically. The Applicant concluded that the assessment methods applied for the COR and ES are appropriate, proportionate to the stages of assessment and consistent with GLVIA3 [REP4-019, Appendix A].
- 5.2.34 We asked for areas of sustained differences to be set out as an action point from the Landscape, Visual and Biodiversity Effects, including Alternatives Issue Specific Hearing (Landscape ISH) [EV-051]. The matter remains a point of difference between the parties [REP5-046, items 1 and 2 and REP6-016, para 2.1.2 to 2.1.17]. It is also pertinent to the parties' differences about the way in which the Ash Level has been assessed.
- (b) Assessment of the Ash Level*
- 5.2.35 KCC maintains that the Applicant underestimates the sensitivity of the Ash Level. The Applicant argued that the proposed development would only traverse the north-east portion of the Ash Levels Landscape Character Area (LCA) [REP5-022, para 2.1 to 2.2]. The Applicant also made the point that even if assessed as medium sensitivity (as suggested by KCC), the outcome of a moderate adverse effect during construction and minor adverse effect during operation would remain the same. This was explained in more detail [EV-052 and REP6-009, Appendix G].
- 5.2.36 The Applicant also responded to KCC's response to Q2.7.1 explaining the definition of a moderate adverse effect (for operation stage) and how the effects from the proposed development in this area would not meet that definition [REP5-012, Q2.7.1 and APP-074, Table 6A.4].
- 5.2.37 KCC's case is that the Ash Level comprises a wider landscape than that described in the Ash Levels LCA because of its wider connectivity, referring to other published landscape character assessments of the area [REP5-046, item 3]. The Applicant argued that the landscape has the capacity to accommodate the replacement of one overhead line,

albeit on taller and wider support structures, with another, without undue consequence to the baseline situation because the baseline already includes infrastructure including overhead lines, a wind turbine and communication masts [REP6-016, para 2.1.13 to 2.1.19 and REP5-046]. No agreement was reached between parties on this point.

(c) Geographical extent of landscape effects

5.2.38 KCC considers the Applicant's ES does not properly assess the very wide geographical extent that the proposed development would have on the landscape because a large number of non-significant adverse effects influencing a large number of LCAs could amount to a significant adverse effect overall [REP2-069, Q1.7.7, REP2-068 and REP4-026, Q2.7.6]. The Applicant states that the landscape character assessment is based on geographical Sections A to D which are distinguishable from each other [APP-029, para 6.13.2]. Also that the geographic sections were discussed with KCC and other statutory consultees during pre-application consultation, and were acknowledged as pragmatic and reasonable for considering the effects of the proposal and are based on landscape character [EV-052].

5.2.39 The Applicant argues that its ES landscape assessment has taken account of geographical extent, as set out in GLVIA3 (para 5.50). It is one factor considered in the magnitude of landscape effects. The Applicant does not agree that a very large number of non-significant adverse effects spread over a large geographical area would necessarily amount to an overall significant adverse effect because it is not simply a case of adding up the sum of effects to identify an overall effect. It argues that professional judgement is involved. This matter was not agreed [REP5-022, para 2.13 and 2.14].

(d) Construction effects

5.2.40 KCC argues that the severity of construction effects is under-reported. (We take this to mean that KCC considers the adverse effects have been downplayed). KCC argues this is because the activities would extend over large geographical areas, bringing construction activity into the heart of rural landscapes and creating a high magnitude of impact in all areas, which it would not be possible to mitigate [REP4-026, Q2.7.1]. At the Landscape ISH, KCC confirmed it considers this to be the case across all geographic sections, specifically mentioning the Ash Level (Section D) [EV-052].

5.2.41 The Applicant disagrees, pointing out that the assessment of construction effects in the ES is in accordance with the method set out (the methodology having been agreed with KCC in the initial SoCG [REP2-024, ID4.3.1A]) [REP5-012]. At the Landscape ISH, the Applicant referred to its method which takes account of the short-term and temporary nature of construction effects in the magnitude of effect judgements, which it argued was in line with GLVIA3. The Applicant confirmed that it had not assessed any construction effects that would give rise to greater than moderate adverse effects. This

matter of construction stage assessments remained a point of professional disagreement between parties [REP5-022, para 2.11 to 2.12].

(e) Application of professional judgement for landscape and visual assessments

- 5.2.42 KCC states in its Written Representation (WR) that whilst the methodology was agreed, it does not consider this has been applied in a transparent manner; and finds the underlying reasoning and professional judgement behind the assessment often to be unclear [REP2-068]. At the Landscape ISH the Applicant explained the process of an expert experiencing landscapes and views on site and the technology available to assist an appreciation of what elements of the proposed development would be visible [REP5-022, para 2.27].
- 5.2.43 A post hearing note to explain further which steps in the assessment process included an element of professional judgement was requested [EV-051]. This states that while there is some scope for quantitative measurement of some objective matters, much of the assessments must rely on qualitative judgements [REP6-007, Appendix C]. The note included explanations of how consistency was achieved and made specific reference to the criteria considered in reaching a professional opinion on value.

Broad Oak Preservation Society's views

- 5.2.44 Broad Oak Preservation Society (BOPS) was actively engaged throughout the Examination. We asked for some clarity on BOPS' role and relationship with the local Parish Council, which we noted had not registered as an IP. The response was *"Broad Oak Preservation Society is an unincorporated body whose membership extends to all residents of the village of Broad Oak. It functions to co-ordinate and present the views of villagers on major developments which may affect the village, with the intention of protecting the rural tranquillity and relative isolation of the village which are the reasons many residents have chosen to make their homes here. It can be considered the residents' association of the village. The Society has its origins more than 40 years ago, when the creation of the reservoir was first proposed. It has been most recently active concerning the latest SEW reservoir scheme, the impact of the Canterbury City Council Draft Local Plan and of course the Applicant's proposals for the Richborough Connection."* It is also stated that Broad Oak itself forms a small part of the administrative area covered by Sturry Parish Council [REP2-077, Q1.12.44].
- 5.2.45 BOPS considers that the landscape methodology does not assess the impact on the landscape when looking out from receptors close to the proposed overhead line. BOPS suggested the method has been designed to conclude that there are no significant landscape impacts arising from the proposed scheme [REP2-077]. The Applicant responded, indicating that it considers that the significance of

landscape effects as reported in the ES is appropriate, and in accordance with the landscape methodology which accords with GLVIA3 [REP3-015, Q1.7.7].

5.2.46 We asked the Applicant to provide signposting for IPs, to assist navigation of the Examination documents relating to landscape and visual effects. This was submitted at DL4 [REP4-014, Q2.7.7]. It sets out all the relevant documents with a précis of what is contained in each. It also explains, with reference to GLVIA3, the difference between landscape and visual assessments; summarised as follows:

- (1) *"assessment of landscape effects: assessing effects on the landscape as a resource in its own right;*
- (2) *assessment of visual effects: assessing effects on specific views and on the general visual amenity experienced by people."*

Matters raised by the Panel

5.2.47 We raised concerns about the way that landscape value has been characterised for Areas of High Landscape Value (AHLV) and Special Landscape Areas (SLAs) resulting in them being assessed as having local value. The Applicant explained its rationale for this, which is that they are based on descriptions in local planning policies and GLVIA3 descriptions [REP2-016, Q1.7.4 part a].

Panel's reasoning and conclusions on landscape methodology

5.2.48 The Panel considered in detail the differences between the Applicant's and KCC's views regarding what appear to be conflicting outcomes of some elements of the landscape assessments carried out for the COR and the ES. The ExA is satisfied that the Applicant's explanation that this arises from the different approaches taken for the COR and the ES is robust because of the different purpose for which the two assessments were undertaken.

5.2.49 We agree that the ES should include reference to the published landscape character assessments⁷⁶. We accept the case that the reliance on the published landscape character reports which assessed generic development, rather than the specifics of the proposed development could result in different outcomes in terms of a landscape's capacity to accommodate change⁷⁷. We agree that refinements would be necessary for the ES assessment, which is specific to this type of infrastructure and the proposed development. We believe this to be the case, even if (as stated) some field survey work was carried out for the COR stage assessment.

5.2.50 With regard to the Ash Level, we agree with the Applicant's point that character assessments produced for different purposes may not reach

⁷⁶ EN-1, para 5.9.5

⁷⁷ EN-1, para 5.9.8

the same conclusion on landscape sensitivity as one that is prepared specifically for a proposed development.

- 5.2.51 We think that such wide use of the local value category results in a moderating influence. However the ExA does agree with the Applicant that the definition, as stated in the agreed methodology, for a moderate adverse effect (ie a significant effect) is not consistent with the effect the proposed overhead line would have on the landscape.
- 5.2.52 The ExA accepts the points KCC makes with regards to the visual effects the proposed overhead line would have across this landscape. We therefore explored this further, prior to and at the Landscape ISH. This is reported later in this section of our report in our consideration of the Holford Rules, undergrounding and the effects on the Ash Level.
- 5.2.53 In terms of the differences of opinion over geographic extent, we acknowledge that it is practical; and common for linear schemes, to base the assessment on geographic sections which are identifiable in terms of their landscape character. We also accept the Applicant's point that large numbers of non-significant adverse effects spread over a large geographical area would not necessarily (although could) amount to an overall significant adverse effect.
- 5.2.54 The Applicant's case that the geographic extent has been included in the professional judgement of magnitude of effect goes to the heart of another point made by KCC regarding lack of transparency in how professional judgement has been applied. The Applicant's methodology clearly states that the geographical extent is considered as part of the magnitude of effect and that this may include the proposed development influencing several landscape character areas [APP-074, para 6.4.12]. The means by which this is applied is not transparent. However the consideration of more than one LCA is explained in the assessment, and where LCAs cross geographic section boundaries, this is reported [eg APP-029, para 6.10.10 and 6.10.19].
- 5.2.55 Whilst this does not fully address KCC's point of wider geographic extent, we also draw from accompanied and unaccompanied site inspections (ASI and USI) which covered the length of the proposed overhead line and areas of PX 132kV line removal [EV-002(D),and EV-014(B)]. We are aware that the proposed alignment passes through areas of different landscape character which are discrete from each other. However the ExA considers that in places there should have been more consideration given to characteristics that overlap. This is especially true in open landscapes, such as at the dividing line between Sections C and D.
- 5.2.56 We do not agree with KCC's case that the accumulation of non-significant adverse effects would amount to a significant adverse effect because we do not consider the geography and landscape scale through which the entire alignment would pass leads to this conclusion. However we do consider the Applicant's reporting in this

regard to be poor and that the overlapping landscape effects at the Section C/ D divide should have been reported.

- 5.2.57 We consider the approach to assessment, notably the use of geographic sections could be faulted for limiting potential effects from adjoining geographic sections because the assessment lacks an overall consideration of landscape effects. Indeed we consider the lack of reporting on overall landscape character to be a weakness in the ES. Although we do not consider it undermines its adequacy. There is also nothing that brings together the separately assessed; landscape elements, landscape character and landscape designations, even on a geographic section-by-section basis.
- 5.2.58 In terms of overall assessment of effects during construction activities, we find that the Applicant has undertaken its assessment in line with the methodology, which takes account of the stated short-term nature of effects. This would comprise 18 months' construction period for the new overhead line and a subsequent 18 month period for the dismantling of the PX 132kV route (overall less than 5 years). We are content that the assessment is sound⁷⁸, although we do differ over the way in which public rights of way (PRoW) have been assessed, which we discuss later in this section of our report.
- 5.2.59 We agree with KCC's points that the ES lacked transparency in describing how and when professional judgement has been applied. We consider this to be the case for the landscape (and visual) assessments. The post hearing note on professional judgements used in assessment provides a better explanation [REP6-007, Appendix C] and demonstrates that the methods adopted by the Applicant are in line with GLVIA3. We also gained further insight to how professional judgement is aligned with technical data available on site for visual assessment from the explanations given at the Landscape ISH [REP5-022, para 2.16]. KCC did not raise further issues following the Applicant's post hearing note. We are satisfied that this has provided us with assurances of consistency and explanation across a professional area that is reliant on qualitative judgement. We are also content that this answers the concerns that BOPS raised regarding lack of objectivity.

VISUAL METHODOLOGY

The Applicant's case

- 5.2.60 The Applicant sets out its visual assessment methodology in the ES [APP-029, Section 7.8] and in more detail in an Appendix [APP-078]. The method is stated to be based on GLVIA3 and is described as considering receptor sensitivity (derived from susceptibility to change and value of view), magnitude of effect and the significance of the effect [APP-029, para 7.8.2]. It includes assessments of all receptors

⁷⁸ EN-1, para 5.9.16

within 1km of the proposed development, illustrated on plan for construction and operation stages [APP-039, Figures 7.4a to 7.4g] and explained in visual impact assessment tables [APP-080, updated as REP2-011]. It is supported by photomontages from agreed viewpoints. The Applicant's detailed visual assessment also includes assessment of representative views in the range of 1km to 3km of the proposed development and of valued views beyond 3km [APP-039, Figures 7.5 to 7.7]. The significant effects are summarised and inter-related effects and cumulative effects described [APP-029, Table 7.9 and Section 7.12, and APP-030, Section 16.5]. Cumulative visual effects are included [REP6-018].

Kent County Council

- 5.2.61 KCC questioned whether the Applicant had properly assessed the difference in a view between conductors versus that of a pylon [REP4-026, Q2.7.21]. The Applicant confirmed that it had; and explained the technology available for use during field assessments to illustrate what would appear in a view of the proposed development [REP5-022, para 2.16].
- 5.2.62 KCC felt that the Applicant should have considered the applicability of *'Wind Turbines and Pylons, Guidance on the Application of Separation Distances from Residential Properties - Executive Summary, 2014'* (the Gillespies' report) [REP5-050]. In particular KCC was keen to see it used to determine the appropriateness of applying minimum separation distances between pylons and residential properties, to protect residential visual amenity, arguing that the Applicant undertake a visual residential amenity assessment [REP4-026, Q2.7.21]. We were unclear how this differed from the Applicant's assessment, especially as the updated Visual Impact Tables included distance between receptor and edge of proposed development [REP2-011] and the assessment had included all visual receptors within 1km [REP5-022, para 2.18].
- 5.2.63 During the course of the Examination, agreement was reached between the two parties, that the Applicant's approach is consistent with the recommendations on trigger distances as set out in the Gillespies' report [REP8-014, ID4.4.8].
- 5.2.64 KCC considered that the assessment of sequential views from PRoWs (which would reflect the experience of moving along a PRoW) is unsatisfactory because the Applicant has given a single (and not serial or sequential) assessment for each stretch of footpath [REP4-026, Q2.7.13]. The Applicant explained at the Landscape ISH that the PRoWs were assessed sequentially, but the assessment in the Visual Impact Table identifies the outcome for the majority of the route, as opposed to the worst case assessment of one part. KCC did not agree with this; stating it would expect stretches of PRoWs with different classifications to be shown on the Figures [REP5-022, para 2.23 to 2.24].

- 5.2.65 The Applicant stated that in designing mitigation, the different assessment outcomes had been taken into consideration and where adverse effects were identified which could be effectively and sympathetically mitigated, planting had been proposed to strengthen landscape character or to filter or screen adverse effects on views [REP5-022, para 2.26]. At the Landscape ISH, the Applicant was requested to demonstrate how its methods were applied to two different stretches of a PRoW [EV-052 and REP5-022, para 2.27].
- 5.2.66 It became apparent that the Applicant has not undertaken a construction stage visual assessment for any stretch of footpath closed for any length of time during the construction period because, it argues, these footpaths would not be available for public use [REP5-022, para 2.25]. We had heard at the Construction Effects ISH that most closures are for a very short period, the longest being around 12 days [REP5-021, para 4.13].

South East Water

- 5.2.67 SEW considers that the ExA needs to see additional photomontages representing views from what it considers to be important receptors north of the proposed development and north of the land that would accommodate the proposed reservoir [REP2-099, para 224]. SEW detailed the information requested [REP2-223 and REP2-224]. SEW also argued for these photomontages on the grounds that they would illustrate the SEW alternatives. We cover this latter point in Chapter 6.
- 5.2.68 The Applicant provided a panoramic photograph [REP4-015, Appendix H]. It does not consider the photomontages to be necessary. The Councils are content with the photomontage locations and KCC emphasised the importance of site visits [REP2-063, REP2-065, REP2-067 and REP2-069, Q1.7.14]. We were guided by SEW to locations from where the proposed development would be visible; in the vicinity of its requested photomontage locations, on our ASI [EV-014B].
- 5.2.69 In the matter of the need for additional photomontages generally to represent receptors not illustrated in the application, the ExA is satisfied that the ES text adequately describes and assesses receptors through the written material in the landscape and visual impact assessments (LVIA). In this regard, we consider the ES to be adequate because all receptors/ receptor groups within 1km of the proposed development have been assessed. We did not consider it necessary to request photomontages from the SEW suggested locations because there are limited receptors and we were able to observe the views in this direction from publically accessible roads and footpaths.

Broad Oak Preservation Society

- 5.2.70 BOPS considers the Applicant's methodology lacks any way of objectively assessing the visual impact of a 50m pylon constructed 200m from a dwelling for the inhabitants of that dwelling [REP2-077, Q1.2.29]. BOPS also disagreed that significant predicted effects would

amount to no greater than moderate adverse. BOPS argued that the effects should be more appropriately assessed as highly adverse (BOPS terminology). BOPS is of this opinion because views from many properties in the village of Broad Oak would be in close proximity to the proposed line [REP2-077, Q1.7.7]. BOPS raised this matter again following the first Broad Oak proposed reservoir ISH [REP3-048].

- 5.2.71 BOPS made suggestions for additional photomontages [EV-009]. We requested the Applicant provide those which we considered would aid our understanding of the visual effects in the Broad Oak area, bearing in mind they are submitted as illustrative material and that the Visual Impact Tables provide the actual assessment on a receptor-by-receptor basis.
- 5.2.72 The Applicant's signposting document on landscape and visual matters, which we had requested, defined assessment of visual effects as assessing effects on specific views and on the general visual amenity experienced by people [REP4-014, Q2.7.7].

Matters raised by the Panel

- 5.2.73 We raised the matter of how regional value of views had been ascribed. The Applicant responded that although the description in the ES implied a deterministic method was used, this was not the case. It set out where and what attributes were considered to reach the value judgement [REP2-016, Q1.7.27]. KCC, which had also questioned this, accepted the explanation, but considered that more transparent explanations should have been provided for judgements [REP4-026, Q2.7.12]. We agree that this is an area where explanation of how the judgements had been reached would have been beneficial. In setting out more information about the way in which professional judgement has been applied, the Applicant argued that it used GLVIA3 guidance in identifying factors used in determining value [REP6-007, Appendix C, para 2.4].

Panel's reasoning and conclusions on visual methodology

- 5.2.74 In terms of the sequential views from public rights of way, The ExA agrees with KCC, that it would have been preferable for the different assessment outcomes for different stretches of PRowS to have been identified clearly and illustrated. In this regard, if the PRow assessment had been illustrated at this finer grain, we think there could have been some stretches where adverse effects were greater than the median outcome, but equally there could have been some stretches where adverse effects were lesser than the median.
- 5.2.75 As it was a sustained point of disagreement between the Applicant and KCC; and the Applicant had confirmed it had used the detail in designing mitigation, we asked KCC to submit locations that it felt were in need of additional mitigation (or enhancement). This is reported under mitigation and enhancement and long distance footpaths and trails later in this section of our report.

- 5.2.76 The ExA strongly disagrees with the Applicant's approach to excluding adverse construction stage visual effects in its assessment of all PRoWs that would be closed even briefly. We think this does amount to an underassessment of construction effects on views from PRoWs. However we do not consider that these would have resulted in significant effects beyond those assessed because of the short-term and temporary nature of effects of construction works⁷⁹.
- 5.2.77 We have taken note of the points expressed by BOPS and undertook a number of USIs to the village [EV-002(D)]. In considering Broad Oak receptors, particularly those on the west of the village; we are satisfied that the findings in the Applicant's assessment are in accordance with the methodology and are correct.

Panel's overall conclusions on landscape and visual methods

- 5.2.78 The ExA is content that overall the Applicant's methods contained in the landscape and visual assessments are fit for purpose⁸⁰, although there are places where we disagree with some application of the methodology.
- 5.2.79 We consider both the landscape and visual assessments are detailed, but in places lack clear analysis, summary and overview. In particular we consider that the conclusions should:
- conclude all aspects (landscape elements, landscape character and landscape designations) of the landscape assessment in each geographic section;
 - cover geographic section overlap; and
 - conclude the landscape and visual assessments for the whole proposed development, not just on a section-by-section basis.
- 5.2.80 We found the determination of specific assessment conclusions lack transparency, although the information included in responses and submissions from the Applicant have helped to clarify matters. That aside, we recognise that assessments do rely on professional judgement as confirmed in GLVIA3. This does mean that others' judgements may differ, which is the case found with KCC in particular. Whilst we agree in places with some points made by KCC, we do not consider that the challenges made to the methodologies undermine the overall conclusions of the Applicant's landscape and visual assessments, when mitigation is taken into account.

⁷⁹ EN-1, para 5.9.16

⁸⁰ EN-1, para 5.9.5

CONSIDERATION OF ALTERNATIVES IN RELATION TO LANDSCAPE AND VISUAL EFFECTS

The National Policy Statement tests

- 5.2.81 EN-1 imposes a policy requirement to consider alternatives with respect to landscape and visual effects⁸¹. EN-1 also sets out guiding principles for decision-makers to use in giving weight to alternatives, including that the consideration of alternatives should be carried out in a proportionate manner⁸². It states that the costs and benefits of these alternatives should be properly considered, particularly in relation to landscape and visual effects before an overhead line proposal is secured⁸³.
- 5.2.82 EN-5 states the Applicant should detail how undergrounding or subsea cables have been considered as a way of mitigating particularly significant visual impacts, including, where these have not been adopted on grounds of additional cost, how the costs of mitigation have been calculated⁸⁴.
- 5.2.83 EN-5 states that where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the decision-maker will have to balance these against other relevant factors, including the need, availability and cost of other sites and routes and methods of installation⁸⁵. It states that the decision-maker should only refuse consent for overhead lines in favour of underground or subsea lines if it is satisfied that the non-overhead alternative will clearly outweigh any extra economic, social and environmental impacts and that technical difficulties are surmountable⁸⁶.
- 5.2.84 The legal and policy requirements for considering alternatives have been set out in Chapter 4 of our report, together with discussion of the Applicant's pre-application alternatives. The way in which the Applicant's consideration of alternatives meets the tests for Good Design is covered in Section 5.3 and the Applicant's consideration of alternatives in relation to biodiversity effects is covered in Section 5.5 of our report. The case pertaining to the three specific alternatives suggested by SEW in proximity to the Broad Oak reservoir proposal is reported in Chapter 6.

The Applicant's case and alternatives considered (including the Holford Rules)

- 5.2.85 As explained in Chapter 4 of our report, the Applicant sets out its consideration of alternatives in a number of places including Chapter 2

⁸¹ EN-1, para 4.4.2

⁸² EN-1, para 4.4.3

⁸³ EN-1, para 3.7.10

⁸⁴ EN-5, para 2.8.4

⁸⁵ EN-5, para 2.8.8

⁸⁶ EN-5, para 2.8.9

of the ES [APP-029], the Planning Statement [APP-127], and is detailed in the accompanying Strategic Options Report (SOR) [APP-130], Route Corridor Study (RCS) [APP-131], Preferred Connection Option and Route Corridor Report (PCORCR) [APP-132], COR [APP-133], and the Pylon Design Options Report (PDOR) [APP-134].

- 5.2.86 The Applicant also sets out the appraisal that it undertook of four technically feasible options for routeing the proposed overhead line in the vicinity of the Broad Oak reservoir proposal and the reasons why it then chose the route that forms the basis of its application [APP-061]. Further detail was provided by the Applicant in response to a number of our FWQs, particularly Q1.7.30 and Q1.12.40 [REP2-016].
- 5.2.87 The Applicant sets out how it has used the Holford Rules in the development of the preferred route and evolution of the design of the proposed development [APP-127, Section 4.8]. It also sets out the Holford Rules and visual amenity principles adopted. In this it states that the Holford Rules are guidance and are particularly helpful at route optioneering stage [APP-079]. In response to our Q1.7.43, the Applicant explained how the Holford Rules had been applied in developing the preferred route and how the Holford Rules were applied to the final route alignment, which is summarised in a table [REP2-17, Appendix O].

The case made by Interested Parties

East Kent MPs

- 5.2.88 The three East Kent MPs (Sir Julian Brazier, MP for Canterbury and Whitstable; Sir Roger Gale, MP for North Thanet and Craig Mackinlay, MP for South Thanet) stated that the line of proposed pylons would scar some of East Kent's most beautiful landscapes [RR-021]. They stated that the proposed development is neither desirable nor necessary as there is a viable undersea route from Zeebrugge (Belgium) to Kingsnorth (Medway Kent), to which they believe scant attention has been paid; which they understand might be slightly more costly in the short term but would, in the longer term, be highly cost-effective.
- 5.2.89 At the Landscape ISH, the MP for Canterbury and Whitstable, Sir Julian Brazier, argued that alternatives have not been properly considered by the Applicant. In particular he felt that there has been no serious attempt to consider a different undersea route from Zeebrugge to Kingsnorth. He questioned why the application is so far advanced without appraisal of what he considers to be a viable alternative. He also challenged the conclusions regarding undergrounding in the application and making the point that when lifetime costs are considered, the suggested undersea option from Zeebrugge to Kingsnorth would be cheaper [EV-052]. Sir Julian Brazier MP confirmed that he was speaking on behalf of all the East Kent MPs when he gave his views at the Landscape ISH.

- 5.2.90 The Applicant stated in response, at the Landscape ISH, that it has to connect to the consented landfall and connection point for the Nemo Link[®], which is at the former Richborough Power Station [EV-052]. The Panel asked the Applicant to provide a signposting document for Sir Julian Brazier MP to demonstrate how it had considered alternatives. This was submitted at DL6 [REP6-007, Appendix A], having also been sent to Sir Julian Brazier MP.
- 5.2.91 From the outset, the MP for North Thanet, Sir Roger Gale, argued that there are alternatives which the Applicant should have considered that would avoid the need for the landfall at Richborough and thereby negate the need for pylons across this part of the Kent countryside with its associated scenic impact. He also stated that based on professional engineering advice he had received, an undersea cable would be cheaper [RR-080].
- 5.2.92 Sir Roger Gale MP gave evidence at the first OFH on Wednesday 27 July 2016. He expressed disagreement with the Applicant's case that this pylon route is the only viable option. He considers alternatives have been discounted which could offer better options such as undersea options with a link from Zeebrugge to Kingsnorth, which he understood would be more cost effective and which would cause little ecological disturbance. Sir Roger Gale MP called for the application to be rejected [EV-018], submitting a letter at DL7 emphasising earlier points made regarding the consideration of alternatives [REP7-044].
- 5.2.93 In response, to a FWQ about lifetime costs from the Panel, the Applicant referred to the SOR, [APP-130, Appendix D], which provides an overview of methods used to estimate lifetime costs and explained how it had made comparative assessments of lifetime costs associated with each technology it had considered. (We have discussed and concluded our opinion on the Applicant's consideration of lifetime costs in Chapter 4). The Applicant felt unable to comment about engineering costs in the absence of the engineering advice to which Sir Roger Gale MP had referred [REP2-016, Q1.7.41].

Kent County Council

- 5.2.94 Throughout the Examination KCC objected to an overhead line and argued that the proposed development should adopt underground technology. This matter remained a point of disagreement between the Applicant and KCC at the close of the Examination [REP8-014, ID5.1.1].
- 5.2.95 KCC initially opposed the proposed overhead line because of its adverse effect on what it described as an important area of special countryside. In its view, underground cables would minimise the visual impact of the scheme, which would be greater in size and scale than the existing PX 132kV overhead line that would be removed [RR-038]. In its WR, KCC argued that the mitigation proposed does not reduce significant adverse effects [REP2-068].

- 5.2.96 KCC contends that the ES underestimates the landscape and visual harm which would be caused by the overhead line, that the need for the overhead line is not outweighed by the harm; and that an underground or undersea⁸⁷ route would be less harmful overall [REP2-069, Q1.7.32]. KCC argues that options for undergrounding at least the most sensitive parts of the route are not fully discussed and that the Holford Rules have not been met which therefore supports undergrounding [REP2-069, Q1.7.43]. KCC called for the Applicant to review the effectiveness and extent of mitigation, which for example, could include undergrounding sections which are particularly adversely affected and improved layout [REP4-026, Q2.7.24].
- 5.2.97 KCC felt that the Applicant's COR assessment of the Kent Downs Area of Outstanding Natural Beauty (AONB) seemed cursory, especially as KCC considers even a slight adverse impact on this highly sensitive receptor could result in a significant effect [REP4-026, Q2.7.2]. However the SoCG with the Kent Downs AONB Unit states there are no outstanding matters and there is agreement on the EIA approach and method, alternatives considered and the RCS; and on the final 400kV overhead line alignment. The AONB Unit has no objections to the proposed development [REP2-026].
- 5.2.98 Responding to our request for IPs to set out any serious concerns⁸⁸ they may have, KCC agreed that the test of serious concerns is relevant. KCC contends that there would be serious concerns in relation to landscape character which would result in a high adverse significance overall because of the wide geographical extent [REP4-026, Q2.7.1]. KCC noted that even using the Applicant's assessment there are significant effects which are considered serious by KCC [REP5-046, Section 8].
- 5.2.99 The Applicant reminded parties that the 'serious concerns' cannot be concerns about any issue but must be concerns about landscape and visual effects. Also that the NPS states that the decision-maker should only refuse overhead line proposals if it is satisfied that the benefits of undergrounding clearly outweigh any extra economic, social and environmental impacts⁸⁹ [REP5-022, para 4.21 to 4.22].
- 5.2.100 The Applicant acknowledged that there is a preference among some consultees for the connection to be placed underground. However it has relied on its assessments, which indicated that there were no areas where the benefits of placing the connection underground would justify the substantial extra cost and environmental impacts of so doing. The matter is not agreed [REP8-014, ID5.1.1].
- 5.2.101 The adverse effects of undergrounding, which differ from those of an overhead line are set out by the Applicant in the COR [APP-133] for

⁸⁷ Assumed to refer to subsea options from Richborough to other substations

⁸⁸ EN-5, para 2.8.8

⁸⁹ EN-5, para 2.8.9

each geographic section. We have discussed these in Chapter 4 of our report where we have considered undergrounding. The adverse effects (which can be biodiversity, landscape and visual, underground archaeology and other heritage, and socio-economic - mainly farming) arise from construction relating to trenches (six over a 45m swathe), underground joint bays, vegetation removal and topsoil stripping and storage and during operation such as the need for cable sealing end (CSE) compounds and restrictions on excavation and planting over the cable swathe.

Historic England

- 5.2.102 In the SoCG between the Applicant and Historic England, it is agreed that with regards the alternatives considered and the RCS, the route corridor identified by the RCS was the most appropriate in its consideration of the potential effects of the proposed development on the historic environment. Also that the route alignment identified in the COR is appropriate in its consideration of the potential effects of the proposed development on the historic environment [REP2-025, para 3.2.1]. We refer to this also in Section 5.5 of our report.

Broad Oak Preservation Society

- 5.2.103 In its RR BOPS expressed the view that the Applicant had not fully explored alternatives such as running the line underground for its last 3km around Broad Oak village, or siting the landfall of the Nemo Link[®] undersea cable on the Isle of Grain, where there are defunct coal-fired power stations with 400kV connections [RR-032]. BOPS stated it is keen that the Examination should cover undergrounding for all or part of the route, using both alternating current AC and High Voltage Direct Current (HVDC) technology and alternative routes such as an undersea route to the Isle of Grain [EV-009]. BOPS requested an ISH or OFH that would cover the matter of alternatives [REP1-016].
- 5.2.104 BOPS drew our attention to the option of using a HVDC underground cable link from the landfall at Sandwich to Canterbury. BOPS suggests there are advantages of HVDC technology over that of AC technology and mentions an example of where it has been used across the Wirral Peninsula [REP2-077, Q1.7.30]. BOPS also questioned the Applicant's lifetime costings of underground cable provision [REP2-077, Q1.7.32 and REP8-029].
- 5.2.105 BOPS repeated a number of points pertinent to alternatives at the OFH [EV-018]. These included that flexibility towards modifying the proposals to use alternatives such as undergrounding had been lacking throughout the consultation, questioning why the Nemo Link[®] is terminating at Richborough when there was a range of landfall sites [REP3-043]. At DL8 BOPS set out points made above in detail on alternatives, including alternative landfall sites, undergrounding design, technology and costs. It also suggested upgrading existing connections. [REP8-029]. We asked the Applicant for a response in our

Rule 17 letter dated 29 November 2016 [PD-014]. These matters have been reported and concluded in Chapter 4 of our report.

- 5.2.106 BOPS accepted the notion that concerns about the potential adverse landscape and visual effects have to be serious for, as it says, "*undergrounding to be the automatic choice for a new power line*". It considers what amounts to serious concerns is a wholly subjective judgement [REP2-077, Q1.7.38]. BOPS disagrees with the Applicant's findings in the COR and SOR, that undergrounding only offers minor visual amenity benefits to Broad Oak. BOPS considers that the Applicant's assessment has ignored most of the Holford Rules [REP2-077, Q1.7.43].
- 5.2.107 BOPS also supports the last 3km of the proposed development round Broad Oak being undergrounded eg from Pylon PC13 to Canterbury North substation. BOPS considers the Applicant's reasons for rejecting this as specious [REP3-043]. BOPS also made representations at the Landscape ISH, where it repeated its view that alternatives had not been considered fully.

Chislet and Hoath Parish Councils

- 5.2.108 Chislet Parish Council states that it considers public opinion about an overhead line has been ignored, that there would be detrimental effect on the beauty of Chislet Marshes and that an alternative landfall such as Kingsnorth would be preferable [RR-083]. It also supports undergrounding. Hoath Parish Council considers an overhead line would cause damage to the rural landscape and that alternatives such as underground or undersea routes or an alternative landfall such as the Isle of Grain should have been considered [RR-015].

South East Water

- 5.2.109 SEW's representations regarding alternatives are discussed in Chapter 4 and Chapter 6 of our report. In its WR, SEW considers Holford Rule 7⁹⁰ has been overlooked because the comparative costs of undergrounding to protect recreational areas have not been addressed [REP2-099, para 194]. The Applicant responds by explaining that its visual assessment does not identify or assess visual receptors associated with the potential future uses of the proposed reservoir as the reservoir proposal did not form part of the assumed future baseline or the cumulative impact assessment.
- 5.2.110 The Applicant also argues that should the proposed development be consented, it would be built and operational prior to the development of the proposed reservoir, so the overhead line would be a feature of the baseline for that development. The Applicant considers in any case

⁹⁰ EN-5, para 2.8.6; Holford Rule 7: "*Approach urban areas through industrial zones, where they exist; and when pleasant residential and recreational land intervenes between the approach line and the substation, carefully assess the comparative costs of the undergrounding*"

that landscape and visual effects identified for existing receptors relating to the proposed development are not incompatible with recreational activities and would not compromise the overall function of the proposed reservoir as an amenity facility [REP4-014, Q2.7.20].

Holford Rules

5.2.111 In addition to consideration of the Holford Rules in the application [APP-078 and APP-127, Section 4.8] the Applicant provided a response to Q1.7.43, giving a summary table outlining how the Holford Rules have been applied to each geographic section of the final route alignment [REP2-017, Appendix O].

5.2.112 KCC stated "*KCC believes that 'in general' a well-designed and sited route which takes careful regard of sensitive areas (as implied by the Holford Rules) could be acceptable.*" [REP5-046]. KCC set out opportunities it felt would help to improve the design to comply more fully with the Holford Rules (whilst retaining its primary position that the proposed development should be an underground connection). These are summarised as follows:

- Holford Rules indicate that tree and hill backgrounds are preferred to sky backgrounds wherever possible⁹¹. The route crosses open marshland, so careful and coordinated design of the route is particularly important to avoid a confusing wirescape⁹²;
- parallel or closely related routes should be planned with tower types, spans and conductors forming a coherent appearance⁹³. This is not the case as a double line of pylons of different sizes and uncoordinated spacing is proposed which would lack balance and be visually intrusive. This problem could be obviated by the undergrounding of the proposed route which would result in a single line of smaller existing pylons; and
- the diamond cross-over⁹⁴ is poorly designed and its undergrounding should be a high priority as it was not included in the Preliminary Environmental Information Report (PEIR), which indicated undergrounding [REP4-026, Q2.7.21].

5.2.113 We explored points KCC raised about compliance with Holford Rule 6⁹⁵. The Applicant explained that the Holford Rules are guidelines for the

⁹¹ Holford Rule 4: "*Choose tree and hill backgrounds in preference to sky backgrounds wherever possible; and when the line has to cross a ridge, secure this opaque background as long as possible and cross obliquely when a dip in the ridge provides the opportunity. Where it does not, cross directly, preferably between belts of trees.*"

⁹² EN-5, para 2.8.6; Holford Rule 6: "*where country is flat and sparsely planted, keep the high voltage lines as far as possible independent of smaller lines, converging routes, distribution poles and other masts, wires and cables, so as to avoid a concentration or 'wirescape'.*"

⁹³ Note on Holford Rule 6: "*Arrange wherever practicable that parallel or closely related routes are planned with tower types, spans and conductors forming a coherent appearance; where routes need to diverge, allow practicable sufficient separation to limit the effects on properties and features between the lines.*"

⁹⁴ The 'diamond cross-over' is the term used to describe the location on Monkton Marshes where the proposed 400kV overhead line would need to pass over the retained PY 132kV line, also involving temporary diversion of the PX 132kV line prior to its dismantling and removal

⁹⁵ Holford Rule 6

routeing of new high voltage overhead lines as set out in EN-5⁹⁶, but it may not always be possible to be consistent with each Holford Rule in every instance. However it has used them to guide the design of the proposed development [REP4-014, Q2.7.18, Q2.7.19 and Q.2.7.20].

- 5.2.114 KCC was concerned about geographic Sections C and D, specifically the diamond cross-over and the double line of pylons of different heights and spacings along Section D. We had asked the Applicant to provide photographs each taken from a similar distance of a standard 132kV lattice pylon, a standard 400kV lattice pylon and a low height lattice pylon. This was in order that we could appreciate the differences in appearance when viewed in a landscape setting, rather than comparing the indicative line drawings in the ES.
- 5.2.115 The Applicant presented the comparison photos at the Landscape ISH, explaining they had been issued to KCC and the other relevant local authorities prior to the ISH [REP5-013, Appendix A]. We were also referred to the indicative dimensions drawing in the ES [APP-034, Figure 3.2], which includes the three types of pylon and provides an indicative height comparison.
- 5.2.116 In response to KCC's comments regarding lack of balance and inconsistent appearance, the Applicant explained that differences in pylon height and span length had been considered; and it had concluded that there would be an adverse effect on landscape character and on some views, particularly those closest to the proposed new line. But, the Applicant argued, that it was not technically possible to construct a 400kV overhead line with tower types, spans and conductors equivalent to the existing 132kV overhead line. This is therefore an aspect of the design which has not been able to meet the guidance in Holford Rule 6 to its fullest extent. The Applicant stated that the low height lattice pylons are closer in height to the existing PY 132kV line pylons than the standard height lattice pylons and are similar structures; namely they are steel lattice supports with conductors suspended from cross arms [REP5-022, para 4.13 to 4.18].
- 5.2.117 In terms of Holford Rule 6 at the diamond cross-over, the Applicant states that efforts were made to synchronise overhead line alignments within Sections C and D as closely as possible, but when the existing PY 132kV line and the proposed 400kV overhead line cross, keeping them independent from one another and avoiding a concentration of lines becomes difficult [REP4-014, Q2.7.18].
- 5.2.118 BOPS considers that the Applicant's assessment has ignored most of the Holford Rules. In particular it mentions that BOPS considers the area of Broad Oak to be of high amenity value⁹⁷, yet this has not been avoided; and there has been no careful assessment of the

⁹⁶ EN-5, para 2.8.5

⁹⁷ Holford Rule 2

comparative costs of undergrounding when the proposed line passes through what BOPS considers to be pleasant residential land⁹⁸ [REP2-077, Q1.7.43]. The Applicant rejects BOPS' claim that the majority of the Holford Rules have been ignored and refers us to its response to Q1.7.43 [REP4-014, Q.2.7.20].

- 5.2.119 Nethergong Camping is also of the opinion that the Applicant has not adhered to the Holford Rules in terms of the visibility of the pylons across the Sarre Penn Valley, where the pylons would be against a sky background⁹⁹ and because the land is flat and sparsely planted consideration has not been given to avoiding wirescape¹⁰⁰ [REP2-090].

Panel's conclusions on the Holford Rules

- 5.2.120 We have considered the Applicant's evidence regarding all the Holford Rules and studied the representations which contend that certain of the Rules have not been adhered to in the way the final route alignment has been designed. Looking at Rule 4, and KCC's concerns in Sections C and D, we consider the Applicant has conformed as far as possible by siting the pylons on lower ground and taking into account backgrounding where it exists. But in acknowledging Richborough as the landfall site (see Chapter 4 of our report), crossing a flat landscape is necessary. In our opinion this does not justify undergrounding, for reasons set out later in this section of our report.
- 5.2.121 Holford Rule 6 is pertinent in its reference to flat, sparsely planted landscapes, particularly in Sections C and D. The Applicant has acknowledged that meeting Rule 6 in these geographic sections is difficult because of the need for the proposed 400kV line to cross the PY 132kV line which would be retained. We understand the design challenge, and initially we were not persuaded that alternatives such as undergrounding had been sufficiently considered at the diamond cross-over.
- 5.2.122 The ExA disagrees with SEW's contention that Holford Rule 7 has not been met because the Applicant has overlooked the recreational areas the reservoir proposal would provide. We do not agree that future users of the proposed reservoir should have featured in the Applicant's baseline assessments. We have discussed this in Chapter 4. We have however considered the effect of the proposed development on the envisaged landscape around the reservoir proposal in Chapter 6. In terms of BOPS' statement on Rule 7 and whether undergrounding has been considered appropriately, we cover this later in this section.
- 5.2.123 In considering how the final route alignment complies with the Holford Rules we had concerns, which were also raised by IPs, over three locations where we wanted to be satisfied that the Applicant had fully

⁹⁸ Holford Rule 7

⁹⁹ Holford Rule 4

¹⁰⁰ Holford Rule 6

complied with EN-5 in terms of Holford Rules triggering the need to consider alternatives and mitigation including undergrounding. We give further consideration to undergrounding later in this section of our report. The ExA is however satisfied the Applicant has applied the Holford Rules as guiding principles in designing the proposed development¹⁰¹ and has acknowledged where it has not met the guidance fully, giving technical justifications for this.

The routeing

- 5.2.124 In response to FWQ, the Applicant repeatedly refers to its consideration of alternative routes in the earlier stages which is summarised in the COR [APP-133, Chapter 2 and Table 2.1] and in the ES which describes the project design stages from strategic options to the detailed assessment [APP-029, Chapter 2]. It also explained how the Applicant considers it fully accords with the policy requirements of EN-1 and EN-5. Also that this justifies the need, which it argues supports the decision for the landfall at Richborough [REP2-016, Q1.7.30 and Q1.12.40]. We have reported our findings in this regard in Chapter 4 of our report.

Panel's conclusions on routeing

- 5.2.125 There were questions from some IPs about why one of the earlier routes considered by the Applicant which went further north bypassing Broad Oak village was not taken forward. This is reported in the Biodiversity Section 5.5 of our report, as the thrust of the arguments are based on avoiding ancient woodland, a component of the landscape. We are persuaded by the Applicant's detailed explanation, which we report in Section 5.5 of our report. Other IPs made cases in connection with biodiversity and farming practices in favour of the earlier alignment in Section D which ran south of the PY 132kV line. Again, on consideration of the evidence and advice from NE, we are persuaded that the Applicant has balanced competing factors appropriately¹⁰².
- 5.2.126 In respect of cases made for alternative landfall points for the connector and entirely different cable routes such as from Zeebrugge to Kingsnorth, based on the harm the proposed development would have on the landscape, we agree with the Applicant's case that the proposed development has to connect to the consented scheme, which is the landfall for the Nemo Link[®] at Richborough. We have reported this and our views on challenges made in connection with splitting the current dDCO application from that for that landfall and Richborough substation for consenting purposes in Chapter 4 of our report. Our views on subsea routes suggested by some IPs are also reported in Chapter 4.

¹⁰¹ EN-5, para 2.8.5 to 2.8.6

¹⁰² EN-5, para 2.8.7

5.2.127 We are content that the Applicant's approach to routeing has included strategic to detailed assessments, consideration of alternatives and has used the guidance set out in the Holford Rules¹⁰³ at appropriate stages in the design development.

Undergrounding

5.2.128 We wanted to satisfy ourselves that the Applicant had not only considered the need for undergrounding on a geographic section-by-section basis, but also for partial undergrounding within the geographic sections. On questioning, the Applicant confirmed that it had concluded that no part of the route would be required to be placed underground. It also provided a table in support, setting out references in the ES (and elsewhere) where the possibility of undergrounding had been investigated [REP2-016, Q1.7.30 and Q1.7.43 and REP2-017, Appendix N].

5.2.129 In Chapter 4 we discussed the Applicant's pre-application consideration of the technical feasibility of undergrounding up to the point of fixing the preferred alignment, , which we found to be sound. What we did not consider in Chapter 4 was the possible need for partial undergrounding where there are serious concerns about potential adverse landscape and visual effects¹⁰⁴.

5.2.130 There were two locations where we wanted to understand in more detail how the decision not to underground had been arrived at. These were round Broad Oak village and the diamond cross-over. KCC had also raised the case for undergrounding sections which would be particularly adversely affected, and for improved layout, at locations such as the diamond-cross-over and for the line from Richborough to the cross-over.

Broad Oak village

5.2.131 In considering Broad Oak village in this section of our report, we are considering the potential effects on the village and representations made in that regard. Matters which relate to the Broad Oak reservoir proposal and the SEW alternatives¹⁰⁵ are addressed in Chapter 6 of our report.

5.2.132 A number of IPs, including BOPS [RR-032], and other individuals [RR-025 and RR-082] questioned why partial undergrounding had not been adopted, specifically for some of the line in the vicinity of Broad Oak. We asked for more details on this. The Applicant set out in full its reasons why undergrounding was not taken forward in this area. These included adverse landscape effects such as cabling through

¹⁰³ EN-5, para 2.8.7

¹⁰⁴ EN-5, para 2.8.8

¹⁰⁵ Alternatives which SEW puts forward as feasible means of delivering the proposed development which would not in SEW's opinion give rise to the same adverse effects on SEW's ability to deliver the proposed reservoir [REP2-099]

ancient woodland and the need for a permanent clear swathe for an easement, potential adverse archaeological and biodiversity effects and the adverse visual effects of additional infrastructure required at transition point(s) for undergrounding such as CSE compound(s) with gantries and terminal pylons [REP2-016, Q1.7.45].

- 5.2.133 The Applicant stated that the COR concluded that there are no areas where the benefits of placing the connection underground would justify; the works, their associated environmental impacts, and the substantial additional cost. Further, that whilst undergrounding offered minor long-term benefits to the local communities of Broad Oak and Sturry, the benefits were not considered sufficient to differentiate this option from the overhead line or to justify the substantial additional costs and adverse environmental effects [REP2-016, Q1.7.45].
- 5.2.134 We have noted in full the concerns raised by BOPS. However, we are persuaded by the Applicant's explanation and outcome of the balancing exercise it undertook in connection with the potential to underground from Pylon PC13 to the Canterbury North substation. The ExA is satisfied with the Applicant's conclusion that the benefits of undergrounding, whilst technically feasible, would not clearly outweigh other adverse effects¹⁰⁶. Indeed we are not convinced that the visual effects would be beneficial overall because of the need for at least one CSE compound at the point of transition from overhead to underground, and the attendant adverse landscape and visual effects this could generate.

Diamond cross-over and double line of pylons

- 5.2.135 Concerns relating to the diamond cross-over were raised on landscape, visual and farming grounds. The need for the cross-over at this location only arose when consideration was being given to moving the alignment from south to north of the PY 132kV line. The full explanation about the evolution of this design was not apparent from the application and subsequent documents. More explanation was given in response to second written questions (SWQ) and at the Landscape ISH [REP4-014, Q2.7.33 and REP5-022, para 4.25 to 4.29]. We cover this in more detail in Section 5.3 on Good Design because the objections raised were not solely on landscape and visual grounds and it is the evolution of the design at this point which is the key to understanding.
- 5.2.136 We visited the diamond cross-over on both a USI and our ASI [EV-002(D) and EV-014B]. We have considered the assessment and information alongside the photomontage of viewpoint VPD1 [APP-044, VPD1] and drawings which depict the proposed development at various stages [APP-034, Figure 3.17]. Based on the detailed explanation given in response to Q2.7.33, we now understand the

¹⁰⁶ EN-5, para 2.8.8

process the Applicant went through in reaching its decision not to underground at this location.

- 5.2.137 We had concerns about the visual impact the double line of pylons, which as proposed, differ in height, width and spacing from each other, would have along the alignment through Section D to the diamond cross-over. Therefore we requested an additional photomontage of the side-on view [REP2-046, VP44]. As previously mentioned, we also requested the photographs for comparison purposes between a standard 132kV pylon and a low height pylon [REP5-013, Appendix A]. We are satisfied with the Applicant's visual assessment in this regard.

Conclusions on undergrounding

- 5.2.138 We do not consider there is a case to be made for undergrounding based on adverse visual effects from the Kent Downs AONB. We note that the Kent Downs AONB is the only nationally designated landscape within the study area and is 4.7km away from the order limits at its closest point. We are content the application complies with EN-5¹⁰⁷. This is based on our own USI which clarified to us the distant nature of the views to the proposed development from the AONB; and also we have given weight to the fact the AONB Management Board is content with the application.
- 5.2.139 The ExA is not persuaded by the case put forward by KCC that because the landscape and visual harm of the development has not been accurately assessed, the need for undergrounding has not been properly considered. We have set out our views on the efficacy of the Applicant's LVIA methodology above. Although we agree that there are some parts of the LVIA which could have been better reported and disagree with the application of the method in places, which could give rise to a greater number of non-significant adverse landscape and visual effects, we consider that the assessment is adequate. Even if the LVIA had covered areas we consider to be shortfalls, we do not consider that potential adverse landscape and visual impacts would be found to be unacceptable in planning terms. We do not agree with KCC's opinion that even using the Applicant's methodology, major adverse effects would be predicted.
- 5.2.140 We are not persuaded in the matter of KCC's argument that the double line of differently sized and spaced pylons would give rise to adverse landscape and visual effects so serious as to warrant undergrounding¹⁰⁸. This is because although there would be less visual symmetry between pylons than currently is the case with the parallel PX and PY 132kV lines, views would comprise fewer pylons because of the longer span of the proposed 400kV line. We reach this conclusion in the knowledge that the landscape in this location is flat and the

¹⁰⁷ EN-5, para 2.8.9

¹⁰⁸ EN-5, para 2.8.8

existing pylons and therefore any proposed pylons would be visible across this landscape for long distances¹⁰⁹.

- 5.2.141 We find that the Applicant has had proper regard to the use of the Holford Rules as guidance in its consideration of the alternative routes studied and in routing for the preferred route and in consideration of undergrounding¹¹⁰.
- 5.2.142 With regards lifetime costs, the ExA is satisfied, as stated in Chapter 4, that the Applicant's assessment of lifetime costs related to alternatives is sound and the Applicant has provided fitting answers to our questions¹¹¹. We have also concluded in Chapter 4 that we do not agree with IPs which make the case for subsea alternatives because this would necessarily involve either a different landfall or a different connection.

Mitigation

- 5.2.143 EN-5 sets out other mitigation opportunities in addition to the Holford Rules and undergrounding; one of which is the selection of the most suitable type and design of support structure¹¹². The Applicant sets out its rationale for the selection of lattice pylons rather than T-pylons, and its reasons for using low height lattice pylons at the east of the proposed development, in its PDOR [APP-134]. The appraisal of pylon types by geographic section considered environmental effects, technical feasibility and cost. The pylon types taken forward and assessed in the ES are:
- standard lattice pylons for Pylons PC1 to PC42 (Sections A to C); and
 - low height lattice pylons for Pylons PC44 to PC61 (Section D), with a standard lattice pylon for PC62, the final pylon before the overhead line reaches Richborough Power Station.
- 5.2.144 Low height lattice pylons were found to perform the best in Section D because there are fewer adverse environmental effects and technically they are better suited to the ground conditions. The likelihood of collision risk for Golden Plover from the Thanet Coast and Sandwich Bay Special Protection Area (SPA) is assessed as much greater with standard lattice pylons.
- 5.2.145 There were queries regarding why the low height pylons had not been used elsewhere [RR-081 and EV-018]. The Applicant provided a detailed response referring to the PDOR explaining that the low height pylons would result in greater negative effects because of the wider arms and the need for more pylons as the distances between them would need to be shorter because of sag [REP3-022, action 6].

¹⁰⁹ EN-1, para 5.9.15

¹¹⁰ EN-5, para 2.8.5 to 2.8.7

¹¹¹ EN-5, para 2.8.9

¹¹² EN-5, para 2.8.10

- 5.2.146 The ExA agrees that an increased number of the wider armed pylons, which would appear bulkier, would give rise to a greater magnitude of effect in terms of the visual effect. We found the photographs submitted of each type of lattice pylon from the same distance were helpful in this regard [REP5-013, Appendix A].
- 5.2.147 The ExA acknowledges that some IPs with an interest in farming practices and the NFU stated they would prefer the T-pylons because the monopile structure requires less land and is easier to navigate around with farm equipment [APP-124 and RR-043]. However we are content that the Applicant gave consideration to farming matters in principle as well as considering the visual effects of two completely different pylon types running parallel to each other across Section D.
- 5.2.148 The Applicant concluded that lattice pylons would perform better because they are visually more similar and have an open structure, and are more suited to the ground conditions, for which the heavier T- pylon structure would not be ideal in Section D. Overall the Applicant found that there was no part of the proposed route where T-pylons offered sufficient advantage over lattice pylons when taking into account environmental grounds and the additional cost which would be incurred [APP-134]. Historic England agreed that the selection of pylon technology in each section of the route is appropriate in its consideration of the potential effects of the proposed development on the historic environment [REP2-025, para 3.2.1].
- 5.2.149 The ExA is satisfied that the Applicant has given proper consideration to visual impact in selecting the most suitable type and design of support structure for the proposed overhead line¹¹³. We agree with the conclusions regarding the use of different pylon types; namely lattice pylons, rather than T-pylons for the proposed development and with the reasons for using low height lattice pylons at the eastern end of the route and for changing to standard lattice pylons west of Pylon PC45.

Conclusions on alternatives in relation to landscape and visual effects

- 5.2.150 The Applicant acknowledges that the technological alternative options such as subsea and undergrounding, would be technically feasible. There is therefore more than one technological approach by which it would be possible to make the necessary connection. However, as stated in Chapter 4, the ExA considers the Applicant has demonstrated its approach to alternatives during the strategic optioneering and route selection stages in arriving at its preferred route and hence the proposed route alignment and pylon types in the current application.
- 5.2.151 We are also content that proper consideration has been given to mitigation for landscape and visual effects in terms of the

¹¹³ EN-5, para 2.8.10

consideration given to alternatives, such as subsea and undergrounding; and where and why these have not been adopted. During the Examination, the Applicant has also provided more evidence about where within the geographic sections it has considered technical alternatives such as partial undergrounding or options to route alignment. We do not agree with IPs who consider that parts or all of the proposed development should be undergrounded because we are satisfied with the Applicant's approach which has considered other means of connection which would have been technically feasible.

- 5.2.152 We consider the Holford Rules have been applied appropriately in guiding the alignment and in the LVIA. The Applicant has provided evidence that has persuaded us that areas over which we had initial concerns were adequately assessed. We are satisfied that the requirements of EN-1 and EN-5 have been met with regard to the way alternatives have been considered in terms of landscape and visual effects. In stating these findings, we note that this does not include the SEW alternatives, which are considered in Chapter 6 of our report.

KEY MATTERS RAISED BY THE PANEL AND INTERESTED PARTIES

- 5.2.153 We now describe and conclude on locations where we and/ or IPs had concerns about the effects of the proposed development on landscape and views. We report locations as they arise from west to east along the proposed route.

Broad Oak village

- 5.2.154 BOPS maintains its objection to the proposed development on the grounds of adverse landscape and visual effect on the village of Broad Oak and surroundings throughout the Examination. It objects to the proposed route which it considers sweeps around the village and is particularly concerned about the effects on properties on the west of the village on roads such as Mayton Lane and Shalloak Road. The effects of Pylons PC6 to PC9 are those of most concern, with particular mention made on more than one occasion of the proximity of Pylon PC8. BOPS disagrees with the weight the Applicant gives to the benefits of removing the PX line outweighing the impact of the proposed 400kV line. BOPS also disagrees with what it considers are inappropriate suggestions for mitigation through planting [REP2-077 and REP4-021].
- 5.2.155 We undertook a number of USIs and an ASI to Broad Oak village and its environs [EV-002(D), EV-014(B)]. A number of IPs and others joined us during our ASI in Broad Oak and were present when the Applicant pinpointed the locations of specific pylons either using GPS and/ or in response we had made for pegging out. We visited Pylon PC8's proposed location and from this location, had the direction of conductors to Pylons PC7 and PC9 pointed out to us. We also viewed the proposed Pylon PC8 location from the entrance to Nook Farm (a location for which we requested a photomontage [REP3-020, VP48]).

- 5.2.156 The Applicant stands by the conclusions of the landscape and visual assessments as included with the application [REP3-015, Q1.7.7]. These are residual moderate adverse landscape effects for construction and operation on the Broad Oak Valley and moderate adverse visual effects for visual receptors on the west and north of the village. The assessment has taken into account the limits of deviation (LoD) limitation in this area, which would reduce the centre line to the south to limit encroachment towards the settlement of Broad Oak [APP-029, para 3.1.15 and APP-034, Figure 3.1b].
- 5.2.157 We have carefully considered the opinions expressed by BOPS. We are content that the Applicant has assessed the landscape of the Broad Oak area and the views from properties within the village adequately. In this, our opinion differs from that of BOPS because we accept the Applicant's definitions in its visual methodology which leads it to an assessment of moderate adverse effect (at worst).
- 5.2.158 We are satisfied that the visual assessment reports both beneficial and adverse effects. Inevitably because the proposed PX line removal and the 400kV line construction are not in the same location, the benefits are to different properties and footpaths from those experiencing the adverse effects. We understand the concerns raised by BOPS, but we do not agree that the Applicant has argued beneficial effects outweigh adverse effects. In our view, the Applicant has reported each fairly and we do not consider that the Applicant was suggesting it could mitigate views of the proposed pylons through planting.

Foxhill House and Stables

- 5.2.159 Foxhill House and Stables [APP-039, Figure 7.4b, A1.H46] is located west of the A291, south of the location where Pylon PC10 would be positioned as part of the proposed development.
- 5.2.160 As well as objections on socio-economic grounds regarding the livery business, objections were received on visual grounds [RR-025, REP1-007 and REP2-085]. We were requested to visit Foxhill Stables and House as part of our ASI [REP1-007]. We viewed the proposed alignment from the field belonging to Foxhill Stables and from the track leading to Foxhill House.
- 5.2.161 We also viewed the tree group G100, which the application shows would need to be removed. Tree group G100 is reported upon further in Chapter 6, because the potential to reduce the extent of removal would be a result of possible movements of Pylon PC10, which are examined in relation to the Broad Oak reservoir proposal.
- 5.2.162 It is clear that the property currently has a view of a rural nature across the valley to the north. Photographs were submitted to illustrate this [REP2-085]. The Applicant's assessment concludes that the property would experience direct northerly views of Pylons PC10 and PC11 and filtered westerly views of Pylons PC8 and PC9 and

records a moderate adverse visual effect during construction and operation [APP-080, A1.H46].

- 5.2.163 The ExA is content with the findings of the Applicant's visual assessment for Foxhill House and Stables. We do not consider the moderate adverse effects would make the proposed development unacceptable in planning terms¹¹⁴.

Kemberland Wood

- 5.2.164 Kemberland Wood is located east of the A291, south of the proposed development near Pylon PC11.
- 5.2.165 The issues raised with regards Kemberland Wood are reported in the Biodiversity Section 5.5 of our report. Matters included which would affect the landscape relate to ancient woodland and protected species in Kemberland Wood. Questions are also raised about an alternative considered, but rejected, by the Applicant which would have avoided the ancient woodland and Kemberland Wood altogether.

Tile Lodge Farm

- 5.2.166 Tile Lodge Farm consists of a group of listed buildings situated just east of Hoath Road and directly north of where Pylon PC16 would be located. The PX 132kV line runs further south of Tile Lodge Farm [APP-039, Figure 7.4c, B1.H9 and B1.H10].
- 5.2.167 The visual effects at Tile Lodge Farmhouse are assessed as moderate adverse during construction and moderate adverse during operation [APP-080, B1.H9 and B1.H10]. It is a location where the LoD have been limited to restrict pylon movement northwards towards Tile Lodge Farm because of the proximity of the listed buildings [APP-029, para 8.10.54 and APP-018, Sheet 5 of 18].
- 5.2.168 Finns LLP, representing landowners, requested the Panel visit Tile Lodge Farm on its ASI [REP1-008]. Finns LLP raised the matter of significant visual effects on the residential properties at Tile Lodge Farm [REP2-052].
- 5.2.169 We did explore whether further restriction would benefit setting and views. The Applicant explained that during the iterative design process a number of options had been explored with Historic England and Canterbury City Council (CCC) and that it would not want to constrain the LoD further [REP2-016, Q1.4.19 and Q1.6.10 and REP2-017, Appendix G]. Historic England's opinion set out in its SoCG with the Applicant is that the mitigation proposed would reduce the magnitude of change and although the harm would be significant it would be less than substantial to the listed buildings at Tile Lodge Farm [REP2-025]. The Applicant assured us that the assessment has been undertaken on

¹¹⁴ EN-5, para 2.8.2

a worst case basis. This is also reported in Section 5.9 of our report on Historic Environment in connection with the setting of listed buildings.

- 5.2.170 In terms of visual effects, we asked for a photomontage representing the view from this cluster of listed buildings. We inspected the Tile Lodge Farm properties and the photomontage viewpoint location on an ASI. From the photomontage, which was taken from further up Hoath Road, it can be seen that Pylons PC16 and PC15 would be visible from these properties, with Pylon PC16 appearing side on and close to the properties [REP2-045, VP39].
- 5.2.171 We also asked about the mitigation planting and whether there is potential for advance planting in this location. The Applicant submitted its CMPP, which illustrates proposed planting in this area [REP2-014, Figure 11.1zi]. The overall approach to advance planting is reported below under mitigation and enhancement. We specifically asked for comments on the mitigation (and enhancement) planting proposed for this area from the landowner. Finns LLP responded with detailed comments on proposed planting on its client's land which included specific points regarding the boundary mitigation planting. Finns LLP reports that the landowner does not find the species mix acceptable because of the inclusion of additional tree planting, which would add to management costs because of the need to pollard (the existing pollarded trees were pointed out to us on the ASI). The landowner considers infill planting using hedgerow species would be acceptable [REP4-025].
- 5.2.172 We explored the mechanisms for ensuring comments from landowners would be accommodated whilst still meeting the mitigation objectives at the second DCO ISH (DCO2) under discussion on R8 of the dDCO [EV-037]. The Applicant explained this would be through the approval process by the relevant planning authority, for the planting scheme, which under R8 of the dDCO needs to reflect the CMPP and the AIA. In addition the Applicant confirmed it would remain in dialogue with landowners in preparing its documents for approval and would seek to satisfy landowners' requests as long as the objectives of the mitigation could be achieved [REP5-019, para 4.29 to 4.34].
- 5.2.173 During the course of the Examination the Applicant updated aspects of the CEMP to give further clarity on construction stage roles such as that of the Arboricultural Clerk of Works (CoW) a Land Officer/ Agent [EV-054 and REP7-018, para 2.11.3, Table 3C.2.4]. The Arboricultural CoW's role would include assessing the need for mitigation planting to inform production of the mitigation planting scheme. The Land Officer/ Agent would be the first point of call for all land-related matters from persons with an interest in land or their agents. With regards the enhancement planting via the LHES, the Applicant made the point that this could only be undertaken with landowner agreement [REP5-019, para 4.31].
- 5.2.174 The ExA is satisfied that the Applicant's visual assessment of the Tile Lodge Farm properties and the landscape assessment which includes

the Tile Lodge conservation area are sound. We recognise that the Applicant has assessed micro-siting scenarios which have resulted in the LoD limitation. This affords some embedded mitigation together with screen planting. We are satisfied that the final scheme for the mitigation planting would be approved by CCC under R8 of the rDCO once the pylon location was fixed. This would ensure that the planting would achieve the stated function. Also that there is an opportunity for the Applicant to consider landowners' requests and that the CEMP provides specified personnel roles who would deal with these matters.

Nethergong Campsite

- 5.2.175 Nethergong Campsite is situated immediately south of Nethergong Penn, east of the minor road which runs from Upstreet to Hollowstreet. The PX 132kV line runs south of the campsite [APP-039, Figure 7.4d, B1.B7].
- 5.2.176 The owners of Nethergong Campsite objected to the proposed development on landscape and visual grounds because of the adverse effect it would have and the resultant business loss it feels would occur [RR-006 and REP2-089]. We were asked to visit the campsite during a busy weekend or summer holidays to see for ourselves [EV-010]. We included a visit to the campsite in our ASI and were shown round by the owners in late July [EV-014B]. We also requested an additional photomontage from Sandpitt Hill and the Wantsum Walk (B1.F5) [REP2-045, VP41]. This was provided and represented views from the part of the campsite closest to the proposed route alignment, which was of particular concern to the landowners.
- 5.2.177 The Applicant's updated visual impact tables included the assessment for the campsite, which concludes moderate adverse visual effect for views during construction, operation and lifetime stages. The assessment notes that camping fields in the northern part of the campsite would have near open views north towards Pylon PC27 comprising the introduction of prominent elements in the view. The haul road and the construction activities associated with Pylon PC27 would be visible in open views from the northern part of the campsite [REP2-011, ref B1.B7]. Views from the vicinity of the shop would have filtered views of the removal of one PX 132kV line pylon during dismantling and then no view south of the 132kV line.
- 5.2.178 We agree with the owners' views that planting would not screen the views of the pylons from parts of the campsite which overlook Nethergong Penn.
- 5.2.179 Restrictions on construction works during the summer months were included in the CEMP as a result of Panel questioning. These are reported in the socio-economic Section 5.4 of our report. In terms of landscape and visual effects, although this would mean that construction activities would not be present in views during key camping periods, we think evidence of construction, such as the haul road would still be visible.

- 5.2.180 The ExA is mindful that changes were made to pylon locations in this area during pre-application consultation to minimise adverse visual (and noise) effects for campers [APP-029, para 2.4.123]. We discuss noise effects in Section 5.6 of our report and are satisfied that appropriate changes were incorporated during the evolution of the design to reduce the adverse visual effects as far as possible from sensitive receptors. We agree with the Applicant's assessment.
- 5.2.181 We note that the filtered views of the PX 132kV line would be removed, but these are less open than ones that would become apparent from the northern camping areas. The Applicant has assessed the effect on views during operation to be moderate adverse. The ExA does not consider the moderate adverse effects in this location would make the proposed development unacceptable in planning terms¹¹⁵.

Historic Wantsum Channel and Wantsum Channel Area of High Landscape Value

- 5.2.182 In commenting on the landscape and visual effects on the Saxon Shore Way and requesting the Panel to undertake a USI along parts of this PRow, KCC pointed out that this area is typified by a distinctive open landscape which is of historic significance. It is part of the Wantsum Channel which historically divided the Isle of Thanet from the UK mainland and provided the historic setting of Richborough Roman Fort [REP1-017].
- 5.2.183 KCC's opinion remains that the ES underestimates the sensitivity of the Ash Level which forms part of the historically important Wantsum Channel and does not take account of its contiguity with adjoining district landscape designations [REP8-014, ID5.2.1]. The Applicant maintains its position in terms of the assessment of the Wantsum Channel AHLV, it assesses the value as local because Local Planning Policy deems that it is not of sufficient quality to be considered of county significance although recognises it does have a distinctive high quality landscape [REP2-016, Q1.7.4].
- 5.2.184 Having walked footpaths in this area, we take note of KCC's arguments about the special nature of this landscape. The Applicant's assessment concludes moderate adverse effects in LCAs in this geographic section for both construction and operation stages. This is based on local landscape value and medium susceptibility to change amounting to medium sensitivity. We note the Applicant's rationale for assessing the Wantsum Channel AHLV's value as local, of which we are not totally convinced. However we also note that even if the landscape value had been assessed as regional, the overall assessment would remain unchanged.

¹¹⁵ EN-5, para 2.8.2

5.2.185 As stated earlier in this section of our report, the ExA does consider that landscape reporting on the overlap of Sections C and D should have been included. This would affect the Wantsum Channel AHLV. However this does not alter our view that based on the accepted methodology, we are content that the Applicant's conclusions of the assessment of the Wantsum Channel AHLV are reasonable. We have paid attention to the qualities of this AHLV but do not consider they are so special that they should be used in themselves to refuse consent¹¹⁶.

The Ash Level

5.2.186 KCC considers the impact of the proposed pylon locations in relation to the existing route compared with that of the existing synchronised pairing of identical structures has not been fully accounted for in the visual assessment. KCC also considers the introduction of what it describes as "*a much bulkier pylon design*" next to the PY route "*would be both visually overpowering and adversely affect landscape character by urbanising an historic landscape of remoteness and tranquillity*" [REP4-026, Q2.7.13 and Q2.7.21]. KCC's concern about the impact on the Ash Level is sustained and reflected in the updated SoCG at the end of the Examination [REP8-014, ID5.2.1].

5.2.187 The Applicant stands by its assessment because, as it argued at the Landscape ISH, the Ash Level LCA baseline comprises two overhead lines and other industrial structures such as a wind turbine and two communications masts. Also that the proposed development replaces one of the existing overhead lines. [REP5-022, para 2.1 to 2.8]. The Applicant makes the point that even if sensitivity was assessed as medium, as suggested by KCC, this would not make a difference to the assessment outcome of moderate adverse effect during construction and minor adverse effect during operation.

5.2.188 Based on the ES, KCC's submissions and USIs (during which we walked the Saxon Shore Way as it passes through Section D) and the ASI, the ExA is aware of the flat and expansive nature of the landscape. We agree from the images submitted that the low height lattice pylon does appear bulky and would not align with the retained PY 132kV line in the way that the two 132kV lines do at present. We agree therefore that there are operational adverse visual and landscape effects. However the ExA is satisfied by the Applicant's justification for assessing the landscape effect on the Ash Level as being minor adverse and not significant because of the existing baseline, which already includes overhead lines; and other infrastructure in the east; and that the proposed overhead line would replace an existing line.

¹¹⁶ EN-1, para 5.9.14

- 5.2.189 The ExA considers the visual assessment conclusions to be reasonable, apart from our earlier criticism of the way in which PRowWs have been assessed, which we report later under Long Distance Footpaths and Trails. However the nature of this landscape means there are limited public and private visual receptors to be assessed. And we do not consider there would be effects greater than moderate adverse, which are predicted in the ES.
- 5.2.190 We also acknowledge the points made by the Applicant with regards the temporary nature of the construction effects. Whilst we consider the Applicant's assessment downplays the construction effects, we do consider those effects would be reversed in a reasonable timescale¹¹⁷.

Diamond cross-over

- 5.2.191 As reported earlier, KCC raised landscape and visual concerns about the diamond cross-over in its arguments for undergrounding and for lack of conformity with the Holford Rules. Other IPs raised concerns on the grounds of difficulties for farming practices which we discuss in Section 5.4 and ornithology, discussed in Section 5.5. As mentioned earlier we report this more fully in Section 5.3 under Good Design.

Sherriff's Court Farm

- 5.2.192 Sherriff's Court Farm is located south east of Monkton and south west of Minster, north of the railway line and north of the two existing 132kV lines [APP-039, Figure 7.4f, D1.B2 and D1.H10].
- 5.2.193 Finns LLP requested we visit Sherriff's Court Farm on behalf of the landowner, to view the alignment of the proposed new 400kV line on the farmhouse [REP1-008]. Finns LLP makes the point that by moving the lines to the north of the existing 132kV lines, the effect on the Sherriff's Court farmyard and farmhouse would increase [REP2-054]. On the ASI, we viewed the existing PX 132kV and PY 132kV lines from fields on the property. The Applicant submitted a plan at DL3 to confirm which pylons we had observed [REP3-025]. We also noted the position of the farmhouse and surrounding vegetation.
- 5.2.194 The ExA does not share the concerns expressed by Finns LLP regarding Sherriff's Court Farm. We are content that the Applicant's visual assessment in this location which describes dense vegetation surrounding the farmhouse and glimpsed views of the PX and PY pylons from the garden and which predicts some limited views such as from third floor windows of the taller and less synchronised 400kV pylons is correctly assessed as having a minor adverse effect for construction and operation stages [REP2-011, ref D1.H10].

¹¹⁷ EN-1, para 5.9.16

LONG DISTANCE FOOTPATHS AND TRAILS

- 5.2.195 The Applicant's visual assessment considers PRoWs in detail as part of the assessment of public views on a section-by-section basis [APP-029, Section 7.9]. For construction and operational effects the descriptions explain if moderate adverse effects would be experienced along part of a footpath. The Applicant demonstrated that in the text the assessment has been undertaken at finer grain detail than is shown on the Figures and in the Visual Impact Assessment Tables.
- 5.2.196 The ExA agrees with the points made by KCC regarding the desirability of clearly presenting the significance of effect along stretches of footpaths. This is particularly the case for long distance trails. KCC expressed its concern about the assessment of the Saxon Shore Way on a number of occasions. It was also concerned about views from PRoWs towards the diamond cross-over [REP5-046]. As requested the Applicant set out for KCC all the footpath receptors in the vicinity of the diamond cross-over [REP5-018, item 12].
- 5.2.197 Overall, the ExA considers there has been under-reporting of adverse visual effects from PRoWs for construction stage because of the omission of those subject to closure. However as stated above for the construction stage, we are satisfied that those effects would be reversible in a reasonable timescale¹¹⁸ and despite downplaying of some construction effects, we consider the overall reporting of significant effects is sound.
- 5.2.198 For operation stage effects, we think more overt transparency about where the non-significant and significant adverse visual effects would occur would have given a better understanding of the effects and their mitigation. However we note that the assessments are contained within the narrative and again we consider the overall reporting of significant effects is sound.
- 5.2.199 The engrossed s106 agreement [REP9-001, Appendix 2, Schedule 5] makes provision for a financial contribution towards accurate up to date, accessible information regarding footpath closures. This is reported in Section 5.7, Traffic and Transport

MITIGATION AND ENHANCEMENT

Embedded environmental measures

- 5.2.200 As described earlier in this section, the application includes embedded environmental measures which have been included to avoid reduce or compensate for potential adverse landscape and visual effects [APP-029, Table 6.8 for landscape, Table 7.3 for visual]. These include retention and protection of woodland, tree belts and hedgerows, reinstatement of farmland, re-use of landscape materials removed for

¹¹⁸ EN-1, para 5.9.16

construction, compliance with Holford Rules and use of the lattice pylon, which the Applicant considers would be visually permeable.

- 5.2.201 The embedded environmental measures are a combination of those measures that have been incorporated into the design as proposed and those which are secured through requirements in the dDCO. The EEMS links in clear tabular format; effects identified in the ES to mitigation, delivery mechanisms, the relevant DCO requirement and the discharge authority [REP7-016].
- 5.2.202 The ExA is satisfied that this document provides clarity for the future discharging authorities, if the Order is made. In coming to this view we give weight to the service level agreement in the s106 agreement, which provides for Reasonable Costs¹¹⁹ incurred by each Council in compliance with their obligations under discharging requirements [REP9-001, Appendix 2, Schedule 3]. This is because matters related to approvals, particularly for R8 of the rDCO approvals of the stage schemes for planting and R10 of the rDCO approvals of the tree and hedgerow protection strategy (THPS) would require input of a detailed nature to ensure the mitigation objectives are achieved.
- 5.2.203 We are content that both mitigation planting, based on the CMPP; and the THPS, which delivers mitigation to protect existing vegetation; should both be subject to future approvals. This is because the precise location of the proposed works has some flexibility provided by the LoD, and therefore trees and hedgerows to be removed and thus mitigation could only be firmed up at a later stage. We are satisfied that the Applicant has assessed the worst case scenario. The ExA is also satisfied that the process of approvals is sound. We agree that the staged planting scheme approvals under R8 of the rDCO, which would come after the staged THPS approvals is an appropriate way to ensure green infrastructure networks are maintained in the vicinity of the proposed development¹²⁰.
- 5.2.204 We agree with the additions that the Applicant made to R10 of the dDCO, which updated references to other documents and inserted specific reference to hedgerows.
- 5.2.205 To progress the sustained difference of opinion between KCC and the Applicant regarding landscape and visual effects, a meeting was held between the two parties on 13 October 2016 to discuss any suggestions for further mitigation or enhancement that KCC wished to make, following the Panel's request in this regard. KCC submitted suggestions at DL5 which included suggested locations for additional planting for mitigation for Section D and enhancement for Sections C and D [REP6-007 and REP5-046, item 9].

¹¹⁹ Reasonable Costs means reasonable additional costs incurred by each Council in compliance with its obligations under paragraphs relating to the discharge of conditions during the post-decision period - as defined in the s106 agreement

¹²⁰ EN-1, para 5.10.20

- 5.2.206 This was discussed further at DCO3, when the Applicant stated that it did not believe further mitigation planting or enhancement was necessary or appropriate on the basis that the planting suggested would not be consistent with the landscape character nor would it be favourable in biodiversity terms. The Applicant argued this is because enhancement of open areas for birds would be more appropriate than planting in this treeless landscape. Dover District Council agreed with the Applicant's rationale [REP7-009, para 9.1 to 9.2]. There was no further submission on this matter from KCC.
- 5.2.207 The ExA is satisfied with the Applicant's justification for not including additional mitigation planting because we consider the Applicant is right in its opinion that tree planting would not be appropriate from a biodiversity or landscape character point of view.

Landscape and Habitat Enhancement Scheme

- 5.2.208 An engrossed s106 agreement between the Applicant and the Councils includes an undertaking to deliver the planting and enhancement works as set out in the LHES [REP9-001, Appendix 2, Schedule 2]. This includes landscape works to reduce further the adverse residual effects on landscape character and views of the proposed development. The Applicant and the Councils agree that the LHES comprises measures relating to enhancements that could be undertaken as compensatory measures¹²¹ [REP8-014, ID4.25.1]. The Councils agree this is an appropriate mechanism. The ExA is satisfied that the level of detail provided in the LHES sets a basis from which the Replacement LHES¹²² could be worked up. We also agree that a Replacement LHES process is necessary because of reliance on landowners for delivery means that changes may need to be made.
- 5.2.209 The ExA is satisfied that LHES as set out in the engrossed s106 agreement is relevant to the landscape and visual effects that would arise from the proposed development, directly related to those effects and is fair and reasonably related to the proposed development in scale and kind^{123,124}. We also consider that the LHES would contribute to biodiversity enhancement¹²⁵.

Advance planting and timing of mitigation planting implementation

- 5.2.210 We explored the potential for advance planting to expedite the delivery of the mitigation and/ or enhancement planting. The Applicant detailed the difficulties of securing advance planting through the dDCO [REP4-014, Q2.7.25]. The Applicant considers that the mitigation

¹²¹ EN-5, para 2.8.11

¹²² 'Replacement LHES' means any replacement to the original Landscape and Habitat Enhancement Scheme - as defined in the s106 agreement

¹²³ EN-1, para 4.1.8

¹²⁴ EN-5, para 2.8.11

¹²⁵ EN-1, para 5.3.4

proposed is appropriate for the assessed effects of the proposed development and an accelerated timetable for delivery would therefore constitute an enhancement. These points were agreed in the updated SoCG between the Applicant and the Councils [REP8-014, ID4.3.9].

- 5.2.211 In SEW's case concerning cumulative effects it mentions that the Applicant has not considered beneficial aspects of cumulative visual effects such as advance planting on SEW's land [REP5-039, Table 1]. The Applicant clarifies it would not be undertaking mitigation planting associated with the proposed reservoir and that in any case, some mitigation planting that the Applicant is proposing would need to be removed should the reservoir come forward [REP5-009].
- 5.2.212 The Applicant agreed to reword R8(2)(d) of the dDCO to clarify that early opportunities for planting would be sought during the implementation of the proposed development. The ExA is satisfied with this re-wording because we consider it would give better clarity for the discharging authority to be alert to opportunities for early planting during implementation of the proposed development. It would also give opportunities for further dialogue with SEW concerning suitable locations for planting on its land in relating to its Broad Oak reservoir proposal.
- 5.2.213 In terms of the timing of the implementation of the mitigation planting generally, the ExA is content with the commitment in R9(1) of the dDCO that planting associated with the 400kV line would be implemented at the earliest opportunity after the relevant stage of the works is brought into operational use. We welcome the addition to R9(1) of the dDCO, which brings greater clarity to the timing of planting works associated with the dismantling of the 132kV line.

Management and maintenance

- 5.2.214 A number of IPs expressed concern about the proposed five year maintenance period being too short. However there were no sustained concerns in connection with the mitigation planting which would be installed as part of the proposed development. The Applicant submitted 'Energy Networks Association Engineering Technical Report: 136 – Vegetation Management Near Electricity Equipment – Principles of Good Practice' (Technical Report 136) in response to points made by the NFU regarding ongoing management and maintenance during operation, and liaison with landowners [REP3-023, Appendix B]. But the Applicant does not consider it necessary or appropriate to include reference to this technical report in the dDCO [REP7-004].
- 5.2.215 The NFU continued to make the case for reference to Technical Report 136 to be included in Article 40¹²⁶ of the dDCO at DCO2. Also for the steps set out by the Applicant [REP3-023, point 24] for the Land Officer/ Land Agent to undertake in relation to tree works to be

¹²⁶ Article 40 was Article 41 in earlier versions of the dDCO

included [REP5-052]. The Applicant remained of the view that it is not necessary to secure anything in this regard in the dDCO, as the guidelines in Technical Report 136 are adopted throughout the industry, represent industry best practice and are normal practice on overhead lines [REP4-014, Q2.5.2 and REP5-019, para 3.28].

- 5.2.216 At DCO3, the Applicant responded to the NFU's suggestion that Technical Report 136 should be included for management of planting undertaken as part of the proposed development to explain that mitigation planting is maintained only for five years by the Applicant and then is the responsibility of the landowner. The Applicant argued that Article 40 of the dDCO is for felling and lopping vegetation which might interfere with the overhead line; not for general management and maintenance [REP7-009].
- 5.2.217 We gave due consideration to the points made by the NFU. We noted that the Councils had previously expressed concern about ongoing management and maintenance; but only for areas of ancient woodland [REP2-024, ID5.4.1]. The matter of operation stage management in ancient woodland is resolved through an additional requirement in the final dDCO (reported in Section 5.5 of our report). The ExA has decided not to recommend inclusion of either a reference to Technical Report 136 or to the steps to be taken in liaising with landowners in Article 40 of the rDCO. This is because we give some weight to the Applicant's arguments that guidance can change and that guidance contained in Technical Report 136 is adopted as an industry standard for vegetation management for safety reasons during operation stages of overhead lines.
- 5.2.218 We agree that the Applicant is correct in its assertion that management of mitigation planting beyond the five years' maintenance is a matter for the landowners. We are satisfied that the ongoing management of the valuable biodiversity resource of ancient woodland is addressed differently from the general management principles. The ExA has not therefore proposed any changes to Article 40 in its rDCO.

CUMULATIVE AND INTER-RELATED EFFECTS

- 5.2.219 The Applicant updated its cumulative assessment which identified there are moderate adverse landscape and visual effects when the proposed development is considered with other developments [REP6-018, Table 4.4]. The assessment establishes that the cumulative changes do not exceed a tipping point that would fundamentally change the landscape character. No cumulative landscape or visual effects are assessed as greater than moderate adverse.
- 5.2.220 The Applicant also assessed inter-related effects, citing biodiversity, heritage, flood risk and contamination as having potential for interaction with landscape and visual effects. The assessment concludes that no potential interactions would be greater of greater

significance than the individual impacts in isolation [APP-029, para 6.13.8 to 6.13.16]

- 5.2.221 The ExA is satisfied that inter-related and cumulative effects have been considered by the Applicant and meet the requirements of EN-1¹²⁷. We are content with the findings of the Applicant's assessment.

DECOMMISSIONING

- 5.2.222 Decommissioning effects are predicted for each geographic section in the Applicant's LVIA [APP-029, Chapters 6 and 7]. It states that activities would be similar to those of construction and therefore the construction assessment outcomes would be the same. On completion of dismantling works, the effects are assessed to be beneficial. R19 of the rDCO states that decommissioning would be subject to a written scheme of decommissioning, subject to local authority approvals submitted six months prior to work commencing. The ExA is satisfied that R19 of the rDCO provides the necessary controls for future approvals prior to decommissioning.

COMPLIANCE WITH LOCAL POLICIES

- 5.2.223 The SoCG between the Applicant and the Councils [REP8-014, ID4.24.1] confirms agreement between the parties on the content of the chapter of the Planning Statement which covers local planning policy [APP-127, Chapter 7 and Appendix C]. Table 7.1 in the Planning Statement includes landscape and visual policies from each of the Local Plans and provides an assessment of how the proposed development meets those policies. The ExA is content that the proposed development is compliant with the local policies as set out in the Planning Statement for landscape and visual and the related topics of good design and biodiversity.

OVERALL CONCLUSIONS ON LANDSCAPE AND VISUAL EFFECTS

- 5.2.224 Our findings set out below do not cover specific landscape and visual matters relating to the Broad Oak reservoir proposal, nor the suggested SEW alternatives in relation to the Broad Oak reservoir proposal.
- 5.2.225 The ExA concludes that there has been some downplaying of construction stage landscape and visual effects in the Applicant's assessments. In particular in Section D and in the vicinity of the diamond cross-over. However taking into account their temporary nature and reversibility, we are satisfied that the adverse impact, which would not amount to more than moderate adverse effects at construction stage, would be reversible in a reasonable timescale¹²⁸.

¹²⁷ EN-1, para 4.2.5 to 4.2.6

¹²⁸ EN-1, para 5.9.16

- 5.2.226 The ExA also concludes that although there are some differences of opinion regarding the findings of the operation stage LVIA, the proposed development has been designed as far as possible to minimise the harm to the landscape and to take account of visual effects on sensitive receptors, incorporating mitigation where feasible and appropriate¹²⁹.
- 5.2.227 We are satisfied the LVIA contained in the ES has adopted relevant guidance, taken account of local polices and covered effects on landscape and visual receptors for construction, operation and decommissioning stages¹³⁰. We have given no weight to the lifetime assessments in the ES. This is because the rationale used for lifetime landscape effects reducing from those assessed for operation is predicated on restoration, reinstatement and management activities that are not secured in the dDCO (except in the case of ancient woodland, which we report in Section 5.5). The lifetime visual effects are reported as remaining the same as for the operational stage.
- 5.2.228 The Applicant has in our view given appropriate consideration to alternative routes and technologies (including undergrounding the entire route and partial undergrounding) and to the Holford Rules in arriving at the alignment for the proposed development¹³¹.
- 5.2.229 The ExA has taken into account the embedded mitigation and that secured through the recommended DCO. The ExA gives some weight to the LHES, to be delivered through the engrossed s106 agreement, but confirms we consider this would be enhancement not mitigation¹³². We consider this provides biodiversity enhancement as well as for landscape and visual effects.
- 5.2.230 We do give weight to the service level agreement, contained in the s106 agreement, which we consider meets all the tests of development consent obligations set out in EN-1¹³³. This is because we consider the approvals that the Councils would be required to undertake that relate to landscape matters in R6, R8 and R10 of the rDCO would require specialist and time-consuming input, to ensure the plans strategies and schemes meet the stated mitigation objectives, the concept plans, and have been assessed in the ES. The ExA considers it is reasonable that the Councils should be reimbursed for their time in the way described.
- 5.2.231 Notwithstanding the proposed mitigation, which we consider to be reasonable and secured in the rDCO; there would remain significant adverse landscape and visual effects, at construction and operation stages, for the project alone and cumulatively with other projects, as well as non-significant adverse effects. The ExA does not consider that

¹²⁹ EN-1, para 5.9.8

¹³⁰ EN-1, para 5.9.5

¹³¹ EN-5, para 2.8.7 to 2.8.10

¹³² EN-1, para 5.9.23 and EN-5, para 2.8.11

¹³³ EN-1, para 4.1.8

any landscape or visual impacts make the proposed development, or any part of it, unacceptable in planning terms¹³⁴, but that these adverse effects need to be weighed in the whole balance against the overall benefits, including need, which is concluded in Chapter 8. The ExA finds there are no reasons based on landscape and visual effects to prevent the Secretary of State from making the Order.

5.3 GOOD DESIGN

INTRODUCTION

- 5.3.1 This Section reports matters related to the criteria for good design as set out in the National Policy Statements (NPS). We also cover climate change and adaptation here, as a function of sustainable development as set out in s10 of PA2008. The main topics covered are the evolution of design and climate change.

POLICY CONTEXT

National Policy Statements

- 5.3.2 The criteria for good design in energy infrastructure are set out in NPS for Energy (EN-1), Section 4.5. It states that high quality and inclusive design goes far beyond aesthetic considerations and that functionality including fitness for purpose and sustainability are equally important; and that the decision maker should be satisfied that these have been taken into account¹³⁵.
- 5.3.3 EN-1 requires the Applicant to have demonstrated how the design evolved, setting out reasons for the selected design where different designs were considered; and for the decision maker to take into account the ultimate purpose of the infrastructure¹³⁶. Good design is also a way by which many of the policy objectives set out in the NPS can be met¹³⁷. NPS for Electricity Networks Infrastructure (EN-5) refers back to EN-1 for good design principles, which should include mitigation of potential adverse impacts¹³⁸.

National Planning Policy Framework

- 5.3.4 Section 7 of the National Planning Policy Framework (NPPF) sets out that good design is a key aspect of sustainable development, to which Government attaches great importance.

¹³⁴ EN-1, para 5.9.15 and 5.9.17

¹³⁵ EN-1, para 4.5.1 and 4.5.3

¹³⁶ EN-1, para 4.5.3 to 4.5.4

¹³⁷ EN-1, para 4.5.2

¹³⁸ EN-5, section 2.5

EVOLUTION OF DESIGN

5.3.5 There were two parts of the application where we felt further explanation was necessary in terms of how the design of the proposed development had evolved. These are the limits of deviation (LoD) and the diamond cross-over¹³⁹. We report on these later in this Section after reporting on the way the Applicant approached its evolution of design.

Design principles

5.3.6 The Applicant sets out its approach to design in its Planning Statement [APP-127, Chapter 4]. As well as setting out design principles adopted, this chapter also summarises the stages undertaken in final design evolution and routeing. The Applicant describes the key responsibilities and objectives which underpin its design principles as:

- the need for new infrastructure (the case for which for the proposed development is made in detail in its Need Case [APP-129] and summarised in the Planning Statement [APP-127, Section 2.2]); and
- the duties under the Electricity Act¹⁴⁰, in particular Section 38 and Schedule 9, which require regard to be given to amenity when carrying out undertakings [APP-127, Section 4.2.3].

5.3.7 The Applicant explains it has also applied the principles contained in EN-1 and EN-5 and that contained in relevant guidance, namely the Holford Rules¹⁴¹ [APP-127, para 4.9.3]. The ways in which the Applicant considers it has met the criteria for good design in the NPS¹⁴² are set out [APP-127, para 6.2.15 to 6.2.25]. We have reported the Applicant's use of (and Interested Parties' (IPs) submissions on its use of) the Holford Rules previously, in Section 5.2 of our report.

Design implications of strategic options

5.3.8 The Applicant states that design evolution has been an iterative process, which considered ways to achieve good design through route corridor consideration, consultation, consideration of alternatives and the application of its design principles [APP-127, para 4.5.1]. We discussed the Applicant's consideration of strategic alternatives and submissions by IPs in Chapter 4. Where there is a policy requirement to consider alternatives, we report on these in Sections 5.2, 5.5 and 5.8 of our report. We also consider alternatives in connection with the Broad Oak reservoir proposal in Chapter 6 of our report.

¹³⁹ A location south of Monkton, where the proposed 400kV line would cross the retained PY 132kV line; described in Sections 5.2 and 5.5 of our report

¹⁴⁰ Electricity Act 1989

¹⁴¹ A series of planning guidelines relating the visual amenity of high voltage transmission, an overview of which is set out in EN-5

¹⁴² EN-1, section 4.5

Design evolution and review process

- 5.3.9 The Applicant explains the process adopted to address relevant design changes arising from consultations and sets out the design changes proposed through consultation and how they have been addressed on a geographic basis [APP-127, para 4.5.8 to 4.5.31], the pylon design options [APP-127, Section 4.6 and APP-134] and the final design evolution [APP-127, Section 4.7]. The explanation of the process is also set out in the ES [APP-029, Sections 2.3 and 2.4].

The local authorities' views

- 5.3.10 Canterbury City Council (CCC) is satisfied that the Applicant has assessed design in its Planning Statement. Dover District Council (DDC) is content with the process and considers the Applicant listened to feedback resulting in the Northern Corridor being chosen. Kent County Council (KCC) deferred response to the districts [REP2-063, REP2-065, REP2-069, Q1.7.72]. The Councils agree that a standalone Design and Access Statement is not necessary [REP8-014, ID4.11.1].

South East Water's view

- 5.3.11 South East Water (SEW) argues that the Applicant failed to meet the EN-1 good design tests because the adverse impact on the Broad Oak reservoir proposal could have been prevented if the reservoir proposal had been considered earlier in the evolution of the design; and could have been mitigated if one of the alternatives proposed by SEW (the SEW alternatives) had been promoted [REP2-099, para 150 to 151].
- 5.3.12 We have concluded that we disagree with SEW's suggestion that the Broad Oak reservoir proposal should have been considered sooner under our discussion on alternatives in Chapter 4. Points in connection with the SEW proposed alternatives are discussed in Chapter 6.

Limits of deviation

- 5.3.13 The Applicant sets out the proposed LoD and the justification for a proportionate degree of flexibility in the ES. Some areas have restricted LoD, responding to physical and/ or technical constraints, which are shown on the Works Plans [APP-018]. The Applicant states that the flexibility introduced by using the LoD has been assessed in the ES [APP-029, para 3.1.7 to 3.1.16].
- 5.3.14 Further explanation was given in response to a number of our First Written Questions (FWQ). This included information on seven LoD pinch point locations which were due to a variety of constraints including groups of trees, environmental constraints, listed buildings and the proximity of the proposed overhead line to residential properties [REP2-017 Appendix G]. Diagrams to illustrate lateral LoD for the different pylon types and explanations were included about the difference between pylon movement and LoD; the latter needing to allow for extent of outermost conductor and any blowout due to wind

[REP2-016, Q1.4.6, Q1.4.8, Q1.5.4, Q1.7.49, Q1.7.51 and [REP2-017 Appendix G].

- 5.3.15 The Applicant also explained that the extent of the possible movement along the line (called longitudinal repositioning) would be determined on a case by case basis, because the extent would depend on the subsequent effects on positions of the next pylons [REP2-030, Appendix G]. At the Landscape, Visual and Biodiversity Effects including Alternatives ISH (Landscape ISH), the Applicant explained that although in theory pylons could be moved anywhere along the line, there were practical restrictions on the movement such as conductor sway and statutory clearances [REP5-022, para 2.20 to 2.22].
- 5.3.16 Limits of deviation were discussed extensively at the three DCO Issue Specific Hearings in so far as the drafting and intent of the article is concerned. A Post Hearing Note explaining LoD was also submitted by the Applicant following the second DCO ISH (DCO2) to provide more information [REP5-015, Appendix B].
- 5.3.17 Combined, this additional information answered our queries. No IPs suggested any other areas where they considered reduced LoD should be included. The National Farmers' Union (NFU) was concerned about the process for agreeing micro-siting within the LoD in the Order limits [REP4-032]. This is reported in Section 5.4 of our report and in Chapter 10.
- 5.3.18 CCC is not in agreement with the LoD in two areas, calling for improved separation distances between the proposed development and other proposed development [REP8-014, ID5.8.1 and 5.8.2]. The two areas are: the CCC-owned employment site at Vauxhall Road, so the land would not be not unduly restricted with regards future use; and secondly the Sturry/ Broad Oak strategic housing site¹⁴³. This is also reported in Section 5.4 of our report.
- 5.3.19 The ExA is satisfied that during the design development of the route, the Applicant has identified locations where it is necessary to restrict the LoD and secured those limits to ensure siting of pylons would minimise adverse effects in relation to existing landscape character, vegetation (including ancient woodland)¹⁴⁴, heritage assets, residential properties and other development¹⁴⁵.

The diamond cross-over

- 5.3.20 The diamond cross-over would be necessary to enable the temporary crossing of the PX 132kV line (before removal) and the permanent crossing of the PY 132kV line, by the proposed 400kV overhead line.

¹⁴³ Reference has also been made to this strategic housing site allocation in Chapter 4 in connection with the Applicant's consideration of two sub-options at Route Corridor Selection stage

¹⁴⁴ EN-1, para 4.5.3

¹⁴⁵ EN-1, para 4.5.2

The cross-over would comprise a series of stages to achieve the aforementioned crossings before achieving the final design [APP-034, Figure 3.17]. The need for a cross-over in this location appeared relatively late in the overall evolution of design, resulting from a change that responded to consultation comments received from Natural England (NE). The proposed 400kV overhead line would lie north of the retained PY 132 kV line to avoid adverse effects on habitat availability for birds [APP-127, para 4.7.11 to 4.7.12].

- 5.3.21 A full explanation about the evolution of the design of the diamond cross-over and why it would be necessary in that arrangement was not clear to us from the application. Additionally, a number of IPs raised matters related to adverse effects that they felt would result. These included:
- landscape and visual from Kent County Council (KCC) - already reported in Section 5.2;
 - socio-economic for the impact on farming practices from landowners and their agents, such as resultant parcels of land which are deemed would become uneconomical to farm - reported in Section 5.4; and
 - collision risk for birds from local landowners and the NFU - reported in Section 5.5 of our report.
- 5.3.22 In response to Second Written Questions (SWQ) and ExA questions at the Landscape ISH, the Applicant explained the rationale for the design evolution of the diamond cross-over in detail [REP4-014, Q2.7.18 and Q2.7.33 and REP5-022, para 4.25 to 4.29]. This is that the design evolved as a response to a range of: combined constraints; technical requirements on the part of UK Power Networks (UKPN) (which is responsible for the PY 132kV line); and the need for the location to be close to the point at which the proposed 400kV overhead line would intersect the existing PY 132kV line. In fixing the location, consideration was given to maintaining a suitable distance from Monkton Reservoir to reduce the potential bird collision risk. The Applicant acknowledged that underground cables are less susceptible to faults caused by weather conditions, but this needed to be balanced with the fact that restoration takes longer.
- 5.3.23 The Applicant assessed that the benefits of an underground solution on landscape, views and the historic environment would only be marginal; and would not outweigh the technical requirements of UKPN, the ecological and archaeological adverse effects of undergrounding and the additional cost. In terms of socio-economic effects on farming, the Applicant found that there would be implications for both underground and overhead options, which were not enough to differentiate between the two.
- 5.3.24 The Applicant provided justification for each of the topics assessed and for the weight it gives to the UK Power Networks technical requirements [REP4-014, response to Q2.7.33]. We do not set out these here. However the ExA is satisfied with the explanations given

by the Applicant in terms of the design process and evolution of the design¹⁴⁶. Also with the reasons for the choice of the diamond cross-over as the favoured design because the Applicant has explained the functional considerations which have been weighed against aesthetics¹⁴⁷. We accept that in opting for an overhead alignment, the Applicant has acknowledged that good aesthetics are met "*as far as is possible*" [REP4-014, Q2.7.33]; and that it has had regard to other regulatory constraints, taken account of sustainability requirements of the PY 132kV line operator and is limited by the appearance of the necessary infrastructure¹⁴⁸.

The Panel's reasoning and conclusions on evolution of design

5.3.25 We refer back to Section 5.2, in which we reported the Applicant's reasons for the selection of lattice pylons rather than T-pylons, and its reasons for using low height lattice pylons at the east of the proposed development. The ExA is satisfied with the reasons set out and the outcome of the appraisal of pylon types because we agree that weight should be given to landscape and visual effects, ground conditions and biodiversity including bird collision risk in reaching this design choice¹⁴⁹.

5.3.26 In those matters over which we had initial concerns we are satisfied that the Applicant has adopted a balanced approach to considering aesthetics, functionality and sustainability of the proposed infrastructure, which in this regard complies with EN-1 and EN-5. We are satisfied that the Applicant's reporting of the alternatives it considered has been suitably reported with reasons set out for reaching the preferred alignment. The ExA's views on whether the alternatives considered meet the policy and legal tests are reported in Chapter 4, Section 5.2, Section 5.5, Section 5.8, Chapter 6 and concluded in Chapter 8 of our report.

CLIMATE CHANGE

5.3.27 Section 10 of PA2008 requires regard to be given to the desirability of mitigating and adapting to climate change. EN-1 requires that the decision maker be satisfied that applicants have taken into account the potential impacts of climate change using the latest UK Climate Projections available when the ES was prepared to ensure appropriate mitigation or adaptation measures have been included¹⁵⁰. EN-5 requires applicants to set out any increased risk to resilience to flooding, effects of wind and storms on overhead lines and higher temperatures¹⁵¹.

¹⁴⁶ EN-1, para 4.5.4

¹⁴⁷ EN-1, para 4.5.1

¹⁴⁸ EN-1, para 4.5.3

¹⁴⁹ EN-5, para 2.5.2

¹⁵⁰ EN-1, para 4.8.6

¹⁵¹ EN-5, para 2.4.1

- 5.3.28 The Applicant sets out how it has addressed resilience in terms of climate change and how this meets relevant NPSs¹⁵² [APP-127, para 6.2.26 to 6.2.34]. The Applicant confirmed that the potential impacts of climate change were taken into account in the Flood Risk Assessment (FRA) [APP-111] and that the relevant topic chapters of the ES have included climate change assessments, based on the latest UK Climate Projections¹⁵³ [REP2-016, response to Q1.12.26].
- 5.3.29 The FRA states *"The operational development would be resilient to the most extreme climate change allowances that are considered feasible over the development's lifetime, and therefore the identification of future adaptation measures are not considered to be necessary"*. [APP-111, para 9.2.3].
- 5.3.30 The FRA concludes that the requirements of EN-1 and the NPPF with respect to flood risk have been met, and flood risk management measures identified would be secured through the requirements of the DCO [APP-111, para 9.2.8]. In the SoCG between the Applicant and the EA, it is agreed that the climate change allowances used in the FRA are appropriate on the basis that the DCO application was submitted prior to the publication of updated guidance issued by the EA in February 2016 [REP8-013, ID3.2.11]. This is discussed in more detail in Section 5.8 of our report.
- 5.3.31 In demonstrating compliance with EN-5, the Applicant states that the resilience of pylon design aspects of climate change, such as wind and storms and higher temperatures, is addressed in National Grid's published Climate Adaptation Report¹⁵⁴. In response to a SWQ asking for further information the Applicant explained that the resilience against climate change, and specifically to the effects of wind and storms on overhead lines, higher average temperatures on transmissions losses, and resilience of flooding/ groundwater or drought on any undergrounded sections, are covered by the Applicant's generic design standards [REP4-014, Q2.12.21].
- 5.3.32 This statement was supported by reference to studies and evidence justifying that there was no need to allow for increased wind factors and that using seasonal maxima rather than average ambient temperatures for conductor design would ensure that the proposed development would be resilient to any increase in average temperatures as a result of climate change in the short to medium term. The Applicant also added that is not proposing any undergrounded sections of 400kV or 132kV cables as part of the proposed development [REP4-014, Q2.12.21].
- 5.3.33 No matters were raised by IPs in connection with climate change mitigation and adaptation. In light of the EA's agreement that the

¹⁵² EN-1, Section 4.8 and EN-5, Section 2.4

¹⁵³ EN-1, para 4.8.5 and 4.8.11

¹⁵⁴ National Grid Electricity Transmission plc, 2010. Climate Change Adaption Report, September 2010.

FRA's climate change allowances are appropriate and the Applicant's assessment being based on the latest UK Climate Projections and the additional evidence submitted; the ExA is satisfied that the ES was prepared using the relevant projections, the design has allowed for climate change resilience and appropriate mitigation has been included¹⁵⁵.

CONCLUSIONS ON GOOD DESIGN

- 5.3.34 The ExA's findings on whether we consider the proposed development would meet the policy objectives set out in the NPSs are contained in many of the topic-based sections of this Chapter 5 of our report because the NPS directs us to consider good design as a means by which many of the policy objectives can be met¹⁵⁶.
- 5.3.35 The ExA therefore does not conclude on good design here, because under the terms of the NPSs, good design requires demonstration that the potential adverse effects associated with overhead lines have been mitigated; and these conclusions are contained in other topic-based Sections of this chapter of our report. We conclude on good design in Chapter 8 of our report.

CONCLUSIONS ON CLIMATE CHANGE

- 5.3.36 The ExA concludes that the proposed development would accord with EN-1¹⁵⁷ and EN-5¹⁵⁸ and that the Applicant has considered the proposed development's resilience to climate change in appropriate detail. The ExA considers there are no reasons on the grounds of mitigation and adaption to climate change which would prevent the Secretary of State from making the Order.

5.4 SOCIO-ECONOMIC

INTRODUCTION AND POLICY CONTEXT

- 5.4.1 EN-1 notes at Section 5.12 that, where the project is likely to have socio-economic impacts at local and regional level, the applicant should undertake an assessment of these impacts as part of the ES.
- 5.4.2 It should also consider all relevant socio-economic impacts¹⁵⁹ and correlation with local planning policy.¹⁶⁰ The Applicant has carried this out in Chapter 15 of the ES [APP-030].
- 5.4.3 The NPS states that the decision-maker should have regard to the potential socio-economic impacts of new energy infrastructure.¹⁶¹ It

¹⁵⁵ EN-1, section 4.8 and EN-5, section 2.4

¹⁵⁶ EN-1, para 4.5.2 and EN-5, para 2.5.2

¹⁵⁷ EN-1, section 4.8

¹⁵⁸ EN-5, section 2.4

¹⁵⁹ EN-1, para 5.12.3

¹⁶⁰ EN-1, para 5.12.4

¹⁶¹ EN-1, para 5.12.6

also requires consideration of potential impacts on agricultural and other land use.¹⁶²

5.4.4 Because of the extended linear nature of the proposed development, the time scales involved and the potential impacts on local businesses, the farming community and tourism, socio-economic effects were identified as a Principal Issue in the Examination. This was noted at Annex B of the ExA's letter of 11 May 2016 [PD-004]. The particular concerns identified at that stage were:

- farming;
- tourism and local recreational users;
- employment;
- efficient business operation; and
- local residents and community.

LOCAL IMPACT REPORT AND RELEVANT REPRESENTATIONS

5.4.5 In its Local Impact Report (LIR) the Joint Councils (Kent County Council (KCC), Canterbury City Council (CCC), Dover District Council (DDC) and Thanet District Council (TDC)) note that DCLG and the Planning Inspectorate's guidance on its preparation has been followed with regard to local social and economic issues [REP2-061, para 1.0.3].

5.4.6 The Applicant suggests in the ES that certain levels of local employment would be generated by the proposed development [APP-030, paras 15.15.10 and 11]. The LIR notes that the Joint Councils are not aware of any mechanism other than 'best endeavours' that could guarantee these potential levels of local employment generated by the proposed development [REP2-061, Section 7.12].

5.4.7 The Applicant suggests in the ES that wider scheme benefits would flow from the proposed development [APP-030, para 15.16.3]. The Joint Councils questioned this on the grounds that there is no supporting information to demonstrate how these figures had been derived [REP2-061, para 7.12.2].

5.4.8 The LIR also notes that limited access along roads and footpaths associated with construction would have a direct impact on local businesses and leisure uses. It was noted that there are no significant tourist attractions along the proposed overhead line other than the general countryside. However, the Joint Councils recognise that concerns have been raised by businesses such as Nethergong Camping [REP2-061, para 7.12.3].

5.4.9 The LIR also refers to local policy. The Panel has had regard to these references and to other relevant local policy, including:

¹⁶² EN-1, section 5.10

- Canterbury City Council Local Plan Policies ED1 and SP3;
- Dover District Council Core Strategy Policy DM2; and
- Thanet District Council Local Plan Policy EC1, CC8 and CC9

5.4.10 Of the 83 Relevant Representations (RR) received by the Examination, 34 mentioned socio-economic matters. Two of these came from organisations representing farming interests (Country Land and Business Association and the National Farmers' Union (NFU)) and 28 came from farmers, landowners or their agents. Four others raised issues not specifically related to agricultural matters.

5.4.11 They indicated that the impact of the proposed development was of concern to IPs involved in the farming industry, and that the assessment of its effects on farming and their effective mitigation would be a relevant and important issue for the Panel's consideration.

METHODOLOGY

5.4.12 The methodology adopted for the socio-economic and land use assessment is set out in the ES [APP-030, Chapter 15]. The local authorities in response to First Written Questions (FWQ) confirmed that they were satisfied with the methodology and that the analysis had been carried out in accordance with it. They also agreed with the conclusions drawn from the analysis [REP2-063, REP2-065, REP2-067 Q1.9.1 to 1.9.8]. The final SoCG with the Joint Councils [REP8-014, ID4.10.1] confirmed agreement on the methodology used in the assessment.

5.4.13 The Panel is content that the methodology used in the socio-economic assessment is appropriate and that the analysis provided in the ES has been carried out using that methodology.

ANALYSIS OF EFFECTS

Farming and agricultural practices

General

5.4.14 The construction corridor for the proposed development would largely pass through productive farming land. The percentage of agricultural land within the proposed Limits of Deviation (LoD) classified as Best and Most Versatile (BMV) varies from approximately 90% in the Stour Valley, 50% in the Sarre Penn Valley, 75% in Chislet Marshes and 95% in Ash Level [APP-030, para 15.13.9, 11, 13 and 15].

5.4.15 The Applicant calculates that some 167 hectares of land would be taken out of agricultural production during the construction phase of the proposed development and considers this to be a small amount of land in the context of the area of agricultural land in the local study area. The effect on economic activity is assessed as negligible with owners appropriately compensated for the temporary loss of land and the rights associated with the presence of the proposed development [APP-030, para 15.13.17].

- 5.4.16 The operational phase of the proposed development is estimated to require a permanent land take of approximately 0.3 hectares. Land currently occupied by pylons for the PX 132kV line, which would be dismantled as part of the proposed development, could be returned to agricultural use. The Applicant does not consider that this requirement would have a material impact on economic activity and so is not significant [APP-030, para 15.13.18].
- 5.4.17 The NFU, Finns LLP (the agent acting for the majority of the farming businesses) and other land agents found the Applicant's approach to the effect on farming economic activity unacceptable [REP2-074 and REP2-047, para 1.5]. Throughout the Examination these parties consistently raised issues of principle in arguments for changes to be made by the Applicant to its approach. In its response to FWQ [REP2-075, Q1.9.7] the NFU notes that "*In terms of the definitions within Table 15.12 agriculture fits entirely within the high sensitivity definition of "Businesses, individuals or groups who are at risk and that have little or no capacity to experience the effect without incurring a material loss"*". The Applicant contends that the issue had been addressed in the ES [REP3-015].
- 5.4.18 The NFU, Finns LLP and other agents were critical of the level and detail of the Applicant's engagement with farmers and landowners prior to the start of the Examination. There was concern that the practical details of the proposed development and the measures put forward to mitigate its impact on farming operations had not been properly addressed. This issue was raised by the NFU [RR-043 and REP2-074 Section 3 and paras 30, 34, 39, 40, 42, 47 and 58], Finns LLP [REP2-047 paras 2.1, 2.2, 2.3 and 3.1] and others. These practical matters were considered during the Examination and the Applicant produced additional information and proposals to address these concerns which have been incorporated into the Construction Environmental Management Plan (CEMP) and other documents. The socio-economic issues raised by the IPs related to:
- field drainage, soils and flood issues from haul roads;
 - access routes to order limits and to land along haul roads;
 - height of cables and clearance for farm machinery, irrigation and polytunnels;
 - future effects on farming operations from pylons; and
 - the 'diamond crossover'.
- 5.4.19 Issues relating specifically to socio-economic matters were examined through written questions and at an Issue Specific Hearing (ISH) into construction effects held on 29 September 2016 which included consideration of the effects on agricultural practice.
- 5.4.20 At DCO1 and DCO2, the NFU, Finns LLP and other IPs questioned how landowners would be involved in determining final site location. The Applicant provided a Post Hearing Note setting out in broad terms, the mechanism for discussions with landowners and the Applicant in relation to micro-siting within the LoD [REP3-023]. The NFU and other

IPs were not satisfied that the Applicant's explanation was detailed enough, such that the NFU proposed the inclusion in Article 5 of a 'dispute resolution process' [REP4-032]. The Applicant did not agree with the NFU's proposal to include what it considered to be a more 'prescriptive mechanism' in the dDCO [REP4-014, Q2.5.1].

- 5.4.21 Notwithstanding the Applicant's explanation of the process it would follow in determining site location [REP3-023], it was not clear to the Panel how these steps would be secured in the dDCO. Furthermore, the Panel did not consider that the explanation provided by the Applicant addressed IP's request that a mechanism should be included in Article 5. In Second Written Questions (SWQ), the Panel asked the Applicant to reconsider whether a more detailed mechanism might be appropriate for inclusion in the DCO in relation to the micro-siting of the pylons, to ensure that impacts on arable practices would be considered alongside construction related issues and if so, what the mechanism would entail and how this would be secured [PD-009, Q2.5.1].
- 5.4.22 Whilst the Applicant did not agree with inclusion of a mechanism in Article 5, it responded at DL6 with the introduction of a 'PIL Liaison Procedure' for micro-siting within the CEMP [REP6-021, para 2.15 and REP7-009, para 4.4].
- 5.4.23 The CEMP was updated during the course of the Examination. It contains details of a range of actions that would be taken to identify, maintain, repair or replace field drainage [REP7-018, para 4.4.26 to 4.4.36]. It is also of note that the duties of the Agricultural Liaison Officer include reporting and recording any damage relating to drainage, and the duties of the Land Officer/ Agent include discussing and agreeing conditions relating to drainage. Both these roles are secured in the CEMP and were added during the Examination in response to concerns raised by various IPs [REP7-018, para 2.11.3]. We are therefore satisfied in terms of the scope of the CEMP in relation to land drainage matters.
- 5.4.24 Although the Applicant undertook to include the appointment of a Land Drainage Consultant in the CEMP, this is not included in the final draft and so is not secured under R5 of the rDCO. However, the role was defined by the Applicant during the Examination [REP5-017, ID15 and REP6-016, Section 3, para 2.5]. From the role identified, we consider that the implementation of land drainage matters in accordance with the CEMP would be better served by the appointment of a Land Drainage Consultant as suggested by representations from the NFU, agents and APs. With this in mind the Secretary of State may wish to secure arrangements by requesting the Applicant to make an addition to the CEMP. If the Secretary of State is minded to request this addition, this could be secured by including the role of the Land Drainage Consultant in the CEMP at Table 3C.2.4, at para 2.11.3, and in the construction team diagram at Inset 3C.2.1.

- 5.4.25 The NFU and the agents sought agreement to a programme of pre-construction soil surveys to establish baseline soil conditions. This would precede a schedule of aftercare maintenance with defined soil condition, soil nutrient levels and organic content. Soil testing would continue until targets were met with additional measures to be implemented at the Applicant's expense if these had not been achieved within five years [REP5-053, para 2.5].
- 5.4.26 The NFU and the agents were concerned that the design of haul roads and accesses should take account of variations in soil type in order to minimise deterioration of the soils. Generic construction details of the Applicant's proposals are given at REP3-003, Sheet 4. In particular there was concern over measures that compromise farmers' control of their land and which could affect their ability to claim Basic Payments Scheme subsidies from the Rural Payments Agency. In particular there were concerns about the discharge of run-off waters into the existing drainage system [REP5-053, para 2.11]. Proposals for the drainage of haul roads, lay-down areas and construction sites are set out in the CEMP [REP7-018, para 4.5.17 to 4.5.19]. These indicate that haul roads would be constructed of granular fill material although there are some particularly sensitive areas where temporary metal track way would be utilised in preference to compacted quarry stone.
- 5.4.27 Surface runoff from access routes and works areas on to agricultural or other land would generally be allowed to infiltrate into the ground wherever possible, with infiltration trenches used where required. Where necessary silt fencing would be used to prevent runoff from these areas directly reaching watercourses, with in-situ small scale measures being used in preference to larger piped systems [REP7-018, para 4.5.18].
- 5.4.28 The outline of a Soil and Aftercare Management Plan (SAMP) included in the CEMP addresses the principal concerns raised by the NFU and others [REP7-018, para 4.4.14]. The plan would be secured under Requirement (R) 6 of the draft DCO and the full document would require the approval of the local planning authority following consultation with the relevant sewerage and drainage authorities, Natural England and the Environment Agency as appropriate, before implementation. Although the NFU asked that it too be consulted in relation to R6, the Applicant argued that the relevant planning authority was the appropriate route through which to channel their concerns [EV-047 to EV-049].
- 5.4.29 From all of the above, the Panel is satisfied that matters relating to soils and drainage issues from haul roads have been adequately addressed within the rDCO.
- 5.4.30 In so far as the NFU's wish to be consulted during the preparation of the construction mitigation plans secured by R6 of the rDCO, the Panel is of the view that the NFU could make its views known on the emerging documents through discussions with the Agricultural Liaison Officer and also via the relevant planning authority. As such, we do

not consider that the NFU should be added to the list of consultees in respect of R6.

Access routes to Order limits and to land along haul roads

- 5.4.31 The NFU and agents raised a number of concerns about access routes and the diversion of Public Rights of Way (PRoW) [REP2-074, Section 12 and REP5-053, paras 2.3 and 2.4]. There was particular concern about damage to existing farm tracks and continued use of access track during construction [REP2-049, para 5 and REP2-052, para 3].
- 5.4.32 The diversion of PRoW is considered in the Public Rights of Way Management Plan (PRoWMP) and the issues raised have been addressed in the Traffic and Transport section of this report [REP7-020, Section 3]. Of particular concern to the NFU and the agents was the diversion of PRoWs within the Order limits where this might encourage users to use unsanctioned diversions.
- 5.4.33 A number of private access tracks are indicated on the Proposed Access Routes for Construction, Dismantling and Maintenance plans as prospectively used for construction and maintenance accesses [REP2-015, Sheet 18]. The NFU was concerned that there had been no discussion with the owners of these tracks and that no agreement over their use has been reached [REP2-074, Section 12].
- 5.4.34 The management of PRoWs is a matter for the highway authority and the contents of the PRoWMP [REP7-020] have been approved by KCC [REP3-011, ID3.2.6]. It requires that inspections of temporary diversions and any remedial actions are to be carried out at times to be determined after talks with KCC PRoW Officers. Regular inspections of PRoWs will take place and short term damage repaired when needed. During construction the Applicant would operate a Community Relations team and contact details would be provided on any signs located along the PRoW network. Any concerns about the condition of the PRoWs raised would be notified to highway authority PRoW Officers [REP7-020, para 3.10].
- 5.4.35 Concerns were raised about the degree of access that would be afforded to farmers and landowners in order to maintain access to their land over temporary haul roads [REP2-074, Section 13 and REP5-053, para 2.10]. Confirmation was sought that access over existing access tracks to be used as haul roads during the construction phase of the proposed development would also be concurrently available for their use. This was provided by the Applicant in comments on WRs [REP3-013, para 2.3.50 and as we report in Section 5.7, the Construction Traffic Management Plan (CTMP) secures appointment of a Transport Co-ordination Officer who would resolve issues and problems through the liaison with relevant stakeholders [REP8-011, section 6].
- 5.4.36 The Panel has considered measures proposed by the Applicant to address the concerns raised by and on behalf of farmers and

landowners with regard to access routes to Order limits and to land along haul roads. Given the specific measures proposed by the Applicant, including the appointment of an Agricultural Liaison Officer, the inclusion of a 'PIL Liaison Procedure' for micro-siting in the CEMP and the provision in the CTMP for a Transport Co-ordination Officer, the Panel concludes that there is a process in place to address and resolve detailed matters in relation to specific landowner concerns.

Height of cables and clearance for farm machinery, irrigation and polytunnels

- 5.4.37 The NFU and agents expressed concerns over the height of overhead conductors and the impact this would have on the practicality and safety of cultivation below them [REP2-074, Section 14]. The height of modern farm machinery is such that its unfettered use would be precluded because of the need to maintain the separations specified by the Health and Safety Executive (HSE) to ensure safe working below and in the vicinity of overhead conductors.
- 5.4.38 This would be of particular concern in the case of irrigation equipment, such as rain and slurry guns, since these must be positioned so that jets of water from them cannot contact overhead power lines [REP2-074, Section 15]. The use of boom sprayers and other wide cultivation equipment could be constrained by the positioning of pylons relative to field boundaries. Concerns were expressed about the impact of overhead conductors and pylons on the use of polytunnels [REP2-074, Section 16] given current HSE advice. Polytunnels are currently in use below the PX 132kV line at Goose Farm but the restrictions sought by the Applicant below the proposed 400kV lines would prevent the erection of new polytunnels in these locations or the continued use of existing ones.
- 5.4.39 The Applicant has indicated that it would be possible to carry out some polytunnel operations on land below the overhead conductors and would be able to provide specific advice when appropriate on how this might be achieved [EV-061].
- 5.4.40 The Panel accepted that there would inevitably be an impact on agricultural practices as a result of restrictions on the irrigation and other machinery in the vicinity of overhead lines and constraints on the construction and use of polytunnels below them. The Panel observed that, despite the assertions of economic loss made on behalf of farmers and landowners, no assessment of the scale of these impacts was produced. We noted that mechanisms to assess and compensate such loss would be available under the rDCO. The Panel therefore concludes that changes to agricultural practices would not represent a reason for refusal to make a DCO for the proposed development.

Future effects on farming operations from pylons

- 5.4.41 The NFU and agents have expressed concerns about the continuing impact on farming operations during the operational phase of the proposed development relating to the positioning of pylons relative to field boundaries [REP2-074, Section 17]. The least disruptive pylon positions are in field boundaries or at field edges but, if this positioning is not possible, they should be positioned sufficiently far from a boundary to allow cultivation machinery access to all sides of the pylon.
- 5.4.42 The problem was put most succinctly by one Affected Person (AP) at the ISH on construction effects including effects on farming practices as noted by the NFU [REP5-053, para 2.7] *"There are ten pylons on our land. Over half are either not close enough to field boundaries or not far enough away. We're the ones that will have to live with this significant disruption...."* The AP provided clarification that landowners would prefer that pylons are either directly aligned within a field boundary, or sufficiently far from a field boundary to enable machinery movements. It was suggested by the NFU that a distance of greater than 35 metres from a field boundary would be needed for modern farm management.
- 5.4.43 The Applicant has provided evidence that consultation has led to the repositioning of a number of pylons [APP-029, paras 2.4.107 to 2.4.130]. It is accepted, however, that it is not possible to meet landowner and farming requirements in every case given the need to comply with the Holford Rules, minimising the use of angle towers by avoiding changes of direction as far as possible [EN-5, para 2.8.6]. For instance the changes sought south of Tile Lodge Farm could not generally be accommodated although two pylons (PC16 and PC17) were moved closer to a field boundary, in the one instance, and to the other side of a road junction in the other [APP-029, para 2.4.114].
- 5.4.44 In response to the concerns raised by the NFU and the agents the Applicant agreed to the inclusion of an Agricultural Liaison Officer, or a person of similar title, in the principal contractor's management structure as set out in the CEMP and secured under R5 of the rDCO. Contact details for the Agricultural Liaison Officer would be made available to farmers and landowners with provision for out of hours contact arrangements [REP7-018, Table 3C.2.4].
- 5.4.45 The post holder would assist in day to day liaison between the contractor, landowners and farmers, providing them with information about the daily construction activities and project programme and reporting issues to both the main contractor and the Applicant's Land and Engineering teams. Other responsibilities would include the use of correct access routes, recording and reporting damage, relaying any requests to amend access route conditions to National Grid, and attendance at all project progress meetings [REP7-018, para 2.11.3 and Table 3C.2.4].

5.4.46 The Panel has considered measures proposed by the Applicant to address the concerns raised by and on behalf of farmers and landowners with regard to future effects on farming operations from pylons. Given the specific measures proposed by the Applicant to address these, especially the appointment of an Agricultural Liaison Officer, the Panel concludes that these concerns have now been appropriately addressed.

Diamond cross-over

5.4.47 During the Examination various concerns were expressed about the diamond cross-over including on the basis that agricultural operations in this area could be disrupted by the presence of more pylons and poles during construction and operational phases. Representations on behalf of an IP with farming interest in the locality emphasised the potential difficulties occasioned by the positioning of the diamond cross-over on this land [REP2-049].

5.4.48 The Applicant confirmed that the broad impacts on agricultural land use had been considered together with the impact of land take on farming. In explaining the factors that had been appraised, in response to a SWQ the Applicant stated *"Other environmental factors including socio-economics were not considered to differentiate between the option for an underground cable solution or overhead line diamond crossover."* The Applicant went on to explain that from a socio-economic perspective this was particularly the case given current land take from the two existing 132kV lines and the benefits that would accrue from removal of the PX 132kV line and return to agriculture. The Applicant also explained that both underground and overhead alignments would have implications for farming practices. Underground would place restrictions on the land above and overhead would involve land take associated with the pylons [REP4-014, Q2.7.33].

5.4.49 As described earlier in Section 5.3, initially we were not clear how the diamond cross-over arrangement had evolved as the preferred design option. When the full explanation was given, including the fact that there would be restrictions on use for agriculture even with an underground option, we accept the Applicant's rationale for this solution. However, we consider it does result in adverse effects on agriculture (as well as adverse landscape and visual effects), which need to be weighed in the overall balance against the benefits of the proposed development. However we also acknowledge the Applicant's point that the current baseline situation requires agricultural activities to work around pylon infrastructure.

Conclusion on farming and agricultural practices

5.4.50 The Panel has considered the objections raised by landowners and land users in relation to the impact of the proposed development on farming and agricultural practices assessed in the socio-economic section of the ES [APP-030, Section 15.13]. The Applicant has

maintained that *"consultation with land owners/tenants has highlighted that construction activities are not considered likely to significantly affect the long-term operation of farm businesses while short-term effects will be compensated in accordance with National Grid's statutory obligations."* [APP-030, para 15.13.2].

- 5.4.51 During the Examination the Applicant explained, modified and added to the application documentation to satisfy many of the objections raised by landowners and land users and presented by the NFU, Finns LLP and other land agents. The inclusion of an Agricultural Liaison Officer and Land Officer/ Agent addressed some of the concerns raised during the Examination.
- 5.4.52 The Panel is satisfied that the mitigation measures now contained in the CEMP [REP7-018] and secured by the dDCO [REP7-003], and its various daughter documents, are sufficient to address these concerns. The CEMP was updated during the course of the Examination. It contains details of a range of actions that would be taken to identify, maintain, repair or replace field drainage [REP7-018, para 4.4.26 to 4.4.36]. It is also of note that the duties of the Agricultural Liaison Officer include reporting and recording any damage relating to drainage, and the duties of the Land Officer/ Agent include discussing and agreeing conditions relating to drainage. Both these roles are secured in the CEMP and were added during the Examination in response to concerns raised by various IPs [REP7-018, para 2.11.3]. We are therefore satisfied in terms of the scope of the CEMP in relation to land drainage matters.
- 5.4.53 Although the Applicant undertook to include the appointment of a Land Drainage Consultant in the CEMP, this is not included in the final draft and so is not secured under R5 of the rDCO. However, the role was defined by the Applicant during the Examination [REP5-017, ID15 and REP6-016, Section 3, para 2.5]. From the role identified, we consider that the implementation of land drainage matters in accordance with the CEMP would be better served by the appointment of a Land Drainage Consultant as suggested by representations from the NFU, agents and APs. With this in mind the Secretary of State may wish to secure arrangements by requesting the Applicant to make an addition to the CEMP. If the Secretary of State is minded to request this addition, this could be secured by including the role of the Land Drainage Consultant in the CEMP at Table 3C.2.4, at para 2.11.3, and in the construction team diagram at Inset 3C.2.1. We acknowledge that there would be likely to be disruption to farming practices, particularly during construction, but also longer term in places. We are however satisfied that appropriate compensation mechanisms would be available in relation to disturbance to farming practice.

Tourism and local recreational use

- 5.4.54 The methodology for the analysis of tourism receptors is set out in the ES [APP-030, Section 15.8] with details of the receptors considered being provided in the Socio-Economic Assessment Tables [APP-117].

In assessing amenity effects consideration has been given to conclusions drawn elsewhere in this ES involving noise, vibration and landscape and visual considerations. The significance score produced for both construction and operational phases for all of the receptors considered in the short list of those subject to landscape, visual or noise and vibration effects was negligible-not significant [APP-117, Table 15A.1.2].

- 5.4.55 The assessment explores in some detail receptors that have a potential for direct effects within the Order limits: for those outside the Order limits but with a potential for indirect effects the assessment makes broad conclusions.
- 5.4.56 The Panel is content that the methodology used for socio-economic assessment for effects on tourism and recreation is appropriate, has been applied correctly and has reached consistent conclusions. Matters relating to the Broad Oak reservoir proposal are addressed in Chapter 6.
- 5.4.57 The Panel notes that although the Applicant has identified a number of tourism and recreation receptors potentially affected by the proposed development, only two of the representations made to the Examination specifically related to these issues.

Nethergong Camping

- 5.4.58 Nethergong Camping raised a number of concerns about the effect of the proposed development on its business during construction and operation should the proposed development be consented. These concerns were in addition to its objections on the grounds of landscape and visual effects; noise and flooding which we consider in Sections 5.2; 5.6 and 5.7 of our report respectively [RR-006, REP2-089 and EV-018].
- 5.4.59 At the first Open Floor Hearing, Nethergong Camping explained that the USP of its business was the space, peace and quiet and the naturalness / idyllic nature of the surrounding countryside which was attractive to urban dwellers, with many campers arriving from London. It also highlighted the multiplier effects of the business in the local economy [EV-018].
- 5.4.60 The campsite referred to a proposal from the Applicant to limit noisy construction activities, so that these would only take place between February and May and thus avoid the busy tourist season during the summer months but explained that this would still have an impact on the business, given that there were two school holidays and three bank holidays during this time. Nethergong Camping were particularly concerned about the construction programme and the effect on the business if there were any delays to this with the knock on effects of construction work taking place during the busier summer months, stating that it could not have campers camping outside whilst construction work was going on.

- 5.4.61 We explored this matter further with the Applicant in our second round questions, questioning whether a new requirement should be included in the dDCO which would ensure that no construction could take place from May to September. As we report in Section 5.6 of our report, the Applicant did not consider a new requirement was necessary, but instead inserted into the CEMP additional measures to prevent noisy construction activities taking place in the months of May to September. In Section 5.6 of our report, we conclude that we are satisfied with this addition to the CEMP which would be secured by Requirement 5 of the rDCO, but with the tailpiece deleted from R5. If the Secretary of State is minded to retain the tailpiece in R5, then we consider that a new requirement should be added to the rDCO.
- 5.4.62 As far as the effects on the campsite during operation is concerned, as reported in Section 5.2 of our report, we note that changes were made to pylon locations in this area during pre-application consultation to minimise adverse visual (and noise) effects for campers [APP-029, para 2.4.123]. Pylon PC28 was relocated further to the north and east of its originally proposed position and Pylon PC27 was also re-positioned. As stated in Section 5.2, we agree with the Applicant's visual assessment which predicts the effect on views during operation to be moderate adverse, which is significant.
- 5.4.63 However, we do not agree with the Applicant's operational amenity assessment of negligible [APP-117, Table 15.A.1.2], which in our mind, down plays what would be an adverse effect on the campsite, which the Applicant shows being derived from moderate adverse landscape and visual and minor adverse/ negligible noise effects. We are of the opinion that the landscape adjacent to and views from the campsite would be altered and that this would be a long term adverse effect which needs to be considered in the planning balance. Whilst we do not consider it would be a significant adverse effect, we do acknowledge it would still affect different parts of the campsite to different degrees. That said, we are of the opinion that whilst the landscape adjacent to and views from the campsite would be altered, this change would not be so great as to deter visitors from staying at the campsite when it is open.

Robin Hood Events at Goose Farm, Broad Oak

- 5.4.64 Robin Hood Events lies within the Order limits with its office close to a construction access such that it was predicted that, without mitigation, it could experience significant adverse effects from the proposed development. The Applicant states, however, that any potential direct effects would be mitigated by means of careful construction programming [APP-030, para 15.9.5]. The construction programme indicates that works affecting this receptor would be undertaken in the low tourism season [REP6-025]. The amenity assessment predicts a negligible significance [APP-117, Table 15A.1.2].
- 5.4.65 The Applicant considers that Robin Hood Events could continue its business during the operational phase of the proposed development

[APP-030, para 15.9.7]. As with the construction phase, the amenity assessment predicts significance of adverse effects to be negligible, therefore not significant [APP-117, Table 15A.1.2].

- 5.4.66 In a written representation submitted at DL6 of the Examination the owner of the business asserts that the erection of a pylon on land that is rented from a local farmer will "*effectively put us out of business.*" [REP6-031].
- 5.4.67 We have considered all the representations made in relation to this matter. We acknowledge that there would be likely to be business disruption as a result of the proposed development. We are satisfied however that this would be only that necessary and kept to a minimum. We are also satisfied that appropriate compensation mechanisms would be available in relation to business disturbance. On this basis, we give the suggested adverse impact limited weight¹⁶³.

Public rights of way and cycle routes

- 5.4.68 PRow, national trails and cycle routes in the area provide recreational and tourism opportunities. There will be direct effects on all those that pass directly below the proposed overhead transmission lines or that are used as, or are crossed by, temporary access roads [APP-030, para 15.10.1].
- 5.4.69 The socio-economic analysis of the impact on PRowS is based on the mitigation measures set out in the PRowMWP [REP7-020] and discussed in Section 5.7 of this report. The conclusion of the Applicant's analysis is that where routes are to remain accessible through managed closure, direct construction effects are considered to be minor and not significant; where longer duration closures are required direct construction effects to users are expected to be minor and not significant with continued access maintained or short diversions provided [APP-030, Section 15.10]. These conclusions apply, with the exception noted below, to all long distance footpaths and cycle routes in the area of the proposed development.
- 5.4.70 The exception to this is the Saxon Shore Way, the 160 mile long distance footpath between Gravesend and Hastings which passes through the Chislet Marshes and the Ash Level and is joined by the Wantsum Walk Long Distance Trail [APP-053, Figures 15.3c and d]. The socio-economic effects of the proposed development are assessed as of medium magnitude [APP-030, para 15.10.34]. These are considered to be minor adverse and not significant as a result of the proposed mitigation measures and, specifically, the provision of an alternative route in this section which will maintain the continuity of the long distance footpaths [APP-030, para 15.10.42].

¹⁶³ EN-1, para 5.12.7

- 5.4.71 The landscape and visual and the transportation considerations of this diversion are discussed in Sections 5.2 and 5.7 of this chapter. The Panel's observation of the proposed diversion route is that it would provide an adequate alternative, through similar if not identical countryside, with similar views and ambience to the original [EV-002(D)].
- 5.4.72 The Applicant concludes that there are no significant indirect socio-economic amenity effects during the construction phase owing to the nature of the use of the PRowS and the temporary nature of any such amenity effect.
- 5.4.73 The same conclusion applies for the operational phase, with no significant direct or indirect amenity effects, where some routes would benefit from the removal of the PX route and others would have minor adverse effects from the presence of the 400kV overhead line.
- 5.4.74 The local authorities expressed concern about the provision of advanced notice of footpath closures and especially of closures of long distance routes. Schedule 5 of the engrossed s106 agreement refers to PRowS and would provide a funding contribution by the Applicant to KCC for the provision of accurate up-to-date and publically accessible information on the KCC and Explore Kent websites. This would provide information about the extent and timing of temporary closures of PRowS as a result of the proposed development [REP9-001, Appendix 2].
- 5.4.75 Little or no evidence of potential harm to tourism brought about by the proposed development has been presented to the Examination. Having regard to the advice in EN-1¹⁶⁴ that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence, particularly in view of the need for energy infrastructure as set out in the NPS, the Panel considers that any residual harmful effects on tourism would not be unacceptable.
- 5.4.76 The ExA is satisfied that the funding contribution to PRow, as set out in Schedule 5 of the engrossed s106 agreement is relevant to the proposed development, directly related to those effects and is fair and reasonably related to the proposed development in scale and kind¹⁶⁵. The ExA concludes that the socio-economic impact of disruption to PRowS as a result of the proposed development would be minor and that the mitigation measures proposed are appropriate and adequate to maintain reasonable, safe and informed access to tourists and other users.

¹⁶⁴ EN-1, para 5.12.7

¹⁶⁵ EN-1 para 4.1.8

River Stour

- 5.4.77 The proposed development would affect navigation on some navigable lengths of the River Stour, imposing temporary restrictions during the construction of temporary access bridges and the installation of overhead conductors. The Joint Councils do not identify the River Stour as a significant tourist attraction in their LIR [REP2-061, para 7.12.3]. No representations have been made on this issue, but the Applicant has recognised the need to work with local user groups to mitigate the impact of closures of the navigation and these may include businesses catering for tourist use of the river. The CEMP contains details of measures to be taken to mitigate the effects of temporary closures of the river [REP7-018, para 4.7.2].
- 5.4.78 The removal of the temporary bridges at the end of the construction phase would mean that the operational phase would have no impact on the navigation. Decommissioning impacts would in all probability be similar to those experienced during construction.
- 5.4.79 The ExA concludes that the measures taken to mitigate the effects of the construction and decommissioning phases of the proposed development on the use of the River Stour navigation are appropriate and adequate.

Conclusion on tourism and local recreational use

- 5.4.80 In assessing the impacts of the proposed development on tourism and recreational use, the ExA concludes that the proposed development would not have an unacceptable effect on amenity at Nethergong Campsite and would only have a minor effect on public rights of way and cycle routes. We also conclude that mitigation measures in relation to the River Stour navigation would be sufficient to avoid unacceptable impact on amenity.

Economic and employment

- 5.4.81 The cost of implementing the proposed development as given in the Applicant's Funding Statement, including UK Power Networks diversion works, is estimated at £73.2 million. The cost of removing the PX 132kV route is approximately £10.9 million [APP-009, para 3.2]. Slightly different figures (£67 million and £8 million for construction and decommissioning respectively) are provided in the ES [APP-30, para 15.15.3].
- 5.4.82 The Applicant has made various assertions about how these sums would be spent in terms of supply contracts and the benefit that would be gained by the British economy as a result. Because no evidence was provided to support these figures and no means of securing the spending included in the dDCO the Panel has placed little weight on these particular assertions.
- 5.4.83 However, the project would generate wider national benefits as a result of the proposed investment in UK electricity networks

infrastructure, in line with the urgent need described in EN-1 and EN-5. The ExA, therefore, attaches considerable weight to the wider impact of the investment which the Applicant would make in the proposed development.

- 5.4.84 The profile of staff requirements over time is summarised in the ES [APP-030, para 15.15.8 to 5.15.16]. This indicates that the greater part of the construction work associated with the proposed development would probably be carried out by labour brought in from outside the region, with little effect on local employment. The majority of jobs taken by local residents would probably be non-specialist construction, security and service jobs, but much would depend on the sourcing policy of the successful tenderer. The ES estimates that an average of 17% of the workforce could be from the local labour market [APP-030, para 15.15.12].
- 5.4.85 The Applicant considers that local employees would not bring any additional spending to the local economy as their living expenses would be incurred regardless of their employment on the proposed development. However, non-local contractors would bring additional economic benefits associated with induced spend and this would benefit, for example, accommodation providers, restaurants and retailers. The Applicant suggests a daily spend for each non-local worker of £50, representing additional spending in the region of £2.4 million over the construction period of two years four months. This compares with a total tourism £860 million per annum tourist spend in the Kent and Medway areas [APP-030, para 15.15.14 to 15.15.16].

Conclusion

- 5.4.86 The Panel has found that the proposed development would not necessarily result in significant economic benefits from supply contracts or local employment. We consider however that the proposed development would have a wider positive impact on the national economy and this is a matter to which we have attached some weight.

Development sites

- 5.4.87 In the Joint Councils' SoCG the alignment of the overhead line and the inclusion of a standard height lattice pylon, PC2, on CCC's development site at the junction of Broad Oak Road and Vauxhall Road is noted as a specific matter currently outstanding between the parties [REP8-014, ID5.8.1]. This matter had been identified and the arguments set out in the ES [APP-030, Table 15.3 and APP-029, para 2.4.153].
- 5.4.88 The Applicant has modified the original position of Pylon PC2 by moving it to a less central position within the development site but was unable to remove it altogether because of the constraints of other pylon lines and residential properties [APP-033, Figure 2.5a]. CCC maintains that the proposed positioning of the pylon would fragment

the site to such an extent that it could only be used for open storage. On balance the Panel agrees with the Applicant that there is no practical alternative to the positioning of Pylon PC2 shown in the rDCO design drawings [REP7-024, Sheet 2]. In the Joint Councils' SoCG the separation between the proposed 400kV overhead line and the Sturry/Broad Oak housing site, referred to in SP3 of the Draft Local Plan, is raised by CCC as a specific matter currently outstanding between the parties [REP8-014, ID5.8.2].

- 5.4.89 In its WR CCC notes that it understands that no concerns have been raised by the landowners and that the proposed 400kV line would not affect the scale of the housing development [REP2-062, para 10.5]. The Applicant notes that the proposed development would not directly affect the proposed strategic development site at Broad Oak including the Sturry Link Road [REP3-014, para 10.5]. This position is agreed with the highway authority in a SoCG [REP3-011, ID3.7.1].
- 5.4.90 In coming to our view, we have particularly taken into account the need to position Pylon PC2 as shown and CCC's views on the proposed strategic development site at Broad Oak. The ExA concludes that the proposed development would not adversely impact the delivery of the housing development SP3 or its associated highway infrastructure. We also conclude that the impact on the development site at the junction of Broad Oak Road and Vauxhall Road would be justified.

Conclusion

- 5.4.91 In view of the above points, the Panel considers that the proposed development would not have an unacceptable effect on housing development SP3 and the development site at the junction of Broad Oak Road and Vauxhall Road.

Community infrastructure

- 5.4.92 The Applicant's assessment of the impact of the proposed development on community infrastructure concludes that, apart from the Canterbury Sea Cadets hut, receptors are located outside the Order limits and no direct construction or operational effects are predicted. The assessment of results from other impacts would mean that there would be no significant indirect amenity effects on these receptors [APP-030, Section 15.11].
- 5.4.93 Potential effects on Canterbury Sea Cadets result from the proposed use of the access to their hut as a construction access route resulting in a potentially significant direct effect.
- 5.4.94 The Applicant asserts that continued negotiation and appropriate traffic management measures would enable continued use of the facility by the Sea Scouts. This mitigation would reduce the magnitude of the effect to negligible and so the effect would be not significant.
- 5.4.95 The Applicant considers that as a result of the measures set out in the CTMP [REP7-019] construction traffic and road closures will not affect

the ability of users of community infrastructure to reach and enjoy these facilities so that effects would be negligible and not significant either during construction or operation.

Conclusion

- 5.4.96 In view of all of the above points, the ExA concludes that the socio-economic effects on community infrastructure would not be unacceptable.

OVERALL CONCLUSIONS

- 5.4.97 The Panel gave detailed consideration to the impacts on farming businesses affected by the proposed development, the possible financial benefits to the local economy of the proposed development and also the financial impacts on business development opportunities in the Vauxhall Road area
- 5.4.98 The Panel's conclusions on the particular aspects of the socio-economic analysis are set out as conclusions at the end of the individual sections above.
- 5.4.99 In terms of farming and agricultural practices, we are satisfied that the mitigation measures now proposed by the Applicant and contained in the CEMP and its various daughter documents are sufficient to address the concerns raised. We have however suggested that the Secretary of State should consider arrangements for the inclusions of a Land Drainage Consultant in the CEMP using information provided by the Applicant during the Examination.
- 5.4.100 On tourism and local recreational use, we are satisfied that disruption would be only that necessary and would be kept to a minimum. We are also satisfied that appropriate compensation mechanisms would be available in relation to business disturbance. We also consider that the proposed development would only have a minor effect on public rights of way and cycle routes and that mitigation measures in relation to the River Stour navigation would be sufficient to avoid unacceptable impact on amenity. We also give weight to the provisions of the s106 agreement in addressing some of the adverse effects associated with construction stage PRow closures raised by the Councils.
- 5.4.101 In terms of economic activity and employment, we consider that the proposed development would have a positive impact on the national economy and would not have an unacceptable effect on development sites and community infrastructure.
- 5.4.102 From all of the above points, the ExA concludes that there are no socio-economic matters to prevent the making of a DCO in respect of the proposed development.

5.5 BIODIVERSITY AND GEOLOGICAL CONSERVATION

INTRODUCTION AND POLICY CONTEXT

Introduction

5.5.1 This section reports biodiversity and geological conservation matters; and alternatives as they are relevant to biodiversity as set out in the National Policy Statements (NPSs). Biodiversity is identified as a principal issue in our initial assessment [PD-004, Annex B]. Biodiversity matters relating to the Habitats Regulations Assessment (HRA) are reported separately in Chapter 7 of our report. This section does not consider biodiversity matters related to the Broad Oak reservoir proposal.

Organisation of this report section

5.5.2 This section is organised as follows:

- Policy context;
- Factual information about relevant parts of the applications;
- The consideration of alternatives as it relates to biodiversity;
- Ancient woodland
- Ornithology not related to European sites;
- Designated sites;
- Habitats;
- Species; and
- Overall biodiversity and geological conservation conclusions.

National Policy Statements

5.5.3 The biodiversity and geological conservation matters of importance to this Examination are covered in the policy guidance in the overarching National Policy Statement (NPS) EN-1: Energy (EN-1). They comprise sites and species identified through international conventions and European directives, Sites of Special Scientific Interest (SSSIs), regional and local designated sites, species and habitats that receive statutory protection under the Wildlife and Countryside Act 1981¹⁶⁶, species with their own legislation such as badgers¹⁶⁷, ancient woodland and veteran trees and other environmental impact assessment (EIA) matters¹⁶⁸.

5.5.4 EN-1 directs the Applicant to include appropriate mitigation measures for construction, to restore habitats and to take opportunities to enhance existing habitats where practicable. EN-1 directs the decision maker to recognise the need to protect the most important biodiversity and geological conservation interests and to avoid

¹⁶⁶ Wildlife and Countryside Act 1981 (as amended)

¹⁶⁷ Protection of Badgers Act 1992

¹⁶⁸ EN-1, section 5.3

significant harm through mitigation and the consideration of reasonable alternatives. The decision maker is directed to take account of what mitigation measures have been agreed between the Applicant and the statutory bodies such as Natural England (NE)¹⁶⁹. EN-1 sets out the need for the decision maker to attach appropriate weight to designated sites, habitats and species¹⁷⁰.

- 5.5.5 NPS EN-5: Electricity Networks Infrastructure (EN-5) draws attention to the risk of bird collision, particularly large birds, with overhead lines. It directs the decision maker to ensure these matters are considered in the Environmental Statement (ES) and that appropriate mitigation would be provided when necessary¹⁷¹.

National Planning Policy Framework

- 5.5.6 The National Planning Policy Framework (NPPF) establishes that the planning system should contribute to conserving and enhancing the natural environment, which includes minimising impacts on biodiversity and geodiversity and recognising the wider benefits of ecosystem services. Principles are set out for conserving and enhancing biodiversity, including planning positively for biodiversity networks.

THE APPLICATION

Environmental Statement

- 5.5.7 The Applicant's Environmental Statement (ES) devotes a chapter to biodiversity [APP-029, Chapter 9]. It covers construction, operation and maintenance, and future decommissioning stages of the proposed development. The chapter is supported by Figures [APP-047] and Appendices which cover survey reports [APP-090 to APP-103], an evaluation of receptors [APP-086] and zones of influence and their justifications [APP-087 to APP-088].

The Embedded Environmental Measures Schedule, the Biodiversity Mitigation Strategy and the Landscape and Habitat Enhancement Scheme

- 5.5.8 An Embedded Environmental Measures Schedule (EEMS) [APP-063] forms part of the application. The final version of the Biodiversity Mitigation Strategy (BMS), which is part of the Construction Environmental Management Plan (CEMP) was submitted at Deadline (DL) 7 [REP7-017]. The Landscape and Habitat Enhancement Scheme (LHES) shows planting and biodiversity enhancements which the Applicant intends to deliver, outside the Order limits, subject to

¹⁶⁹ EN-1, para 5.3.18 to 5.3.20

¹⁷⁰ EN-1, para 5.3.6 to 5.3.8

¹⁷¹ EN-5, para 2.7.1 to 2.7.6

landowner approvals [APP-123]. The functions and links to the DCO of these documents have been explained in Section 5.2 of our report.

Sites of geological conservation importance

- 5.5.9 EN-1 states that the Applicant should ensure the ES clearly sets out any effects on internationally, nationally and locally designated sites of geological conservation importance¹⁷². The Applicant reports that there are no designated sites within the Order limits, so no potential for the proposed development to have direct effects on geological conservation receptors. Indirect effects on any Regionally Important Geological Sites within 500m of the Order limits and SSSIs with geological interest features within 1km of the Order limits are considered in Chapter 14 of the ES [APP-030, para 14.8.12 to 14.8.18]. It concludes that the proposed development does not have the potential to cause indirect effects on geological conservation sites.
- 5.5.10 Accordingly, potential effects on geological conservation receptors are scoped out of the assessment and are not considered further. It is reported that NE has provided agreement to this scoping decision, in relation to SSSIs. This is confirmed in the initial SoCG between the Applicant and NE and remains unchanged in the final SoCG [REP6-011, ID3.6.1].

THE APPLICANT'S CONSIDERATION OF ALTERNATIVES IN RELATION TO BIODIVERSITY

The policy position

- 5.5.11 In this Section we consider the policy requirement to consider alternatives in relation to biodiversity¹⁷³. As stated in Chapter 4 and Section 5.2 of our report, the Applicant set out the way in which it has considered alternatives in a number of places in the application. The Applicant also provided more detail in response to a number of the ExA's questions, particular Q1.7.30 and Q1.12.40 [REP2-016].

The Applicant's position

- 5.5.12 Biodiversity is a matter given consideration in the Applicant's appraisal processes contained in the Strategic Options Report (SOR) [APP-130], Route Corridor Study (RCS) [APP-131], Preferred Connection Option and Route Corridor Report (PCORCR) [APP-132] and Connection Options Report (COR) [APP-133]. The RCS identified two potential route corridors:
- the Northern Corridor, that follows the 132kV PX route and had three sub-options at the western end of the route and two

¹⁷² EN-1, para 5.3.3

¹⁷³ EN-1, section 4.4 and para 5.3.7

scenarios, the difference being that scenario 2 assumed removal of the existing 132kV line; and

- the Southern Corridor, that followed a more southerly route north of Ash and Wickhambreaux [APP-029, Section 2.4 and APP-059].

5.5.13 The Northern Corridor, sub-options A and B were taken forward on the basis they had the least overall adverse effects. The Applicant explained how it responded to consultation responses requesting design changes and the evolution of the final design [APP-029, para 2.4.101 to 2.4.162]. Rejected change requests are set out [APP-029, Table 2.6]. These included requests to consider changes for biodiversity reasons:

- a request to avoid direct impact on Lynne Wood and the West Blean and Thornden Woods SSSI routing west of Lynne Wood in the vicinity of Pylon PC4 was rejected because the 400kV route avoids Lynne Wood, the diversion works for the 132kV PX line are location-specific and the route proposed achieves the best solution for the SSSI; and
- a request for options to avoid Kemberland Wood in the vicinity of Pylon PC11 was rejected because it would involve Pylons PC10 to PC13, would introduce two new angle pylons and an additional pylon, would come closer to Broad Oak village and would be less consistent with Holford Rule 3¹⁷⁴ because it would not take the shortest and most direct route. Also there is no permanent loss of ancient woodland (see later in this Section of our report). This alternative is referred to by some of the IPs as reported below.

5.5.14 The Applicant considered four options (A to D) to the route in the vicinity of Broad Oak (village and the reservoir proposal). Each option is appraised in terms of environmental effects (ecological, landscape, visual and heritage), technical feasibility and costs [APP-061]. Options A, B and C comprise adjustments closer or further way from the reservoir proposal, which have the inverse effect in terms of distance to the settlement of Broad Oak. Option D routes the overhead line to the north of the reservoir and would require in the order of eight new pylons. The advantage of Option D over the other existing options of avoiding Kemberland Wood Local Wildlife Site (LWS) is not considered sufficient to outweigh the negative effects of a number of additional pylons and the fact it would affect a greater extent of Lynne Wood ancient woodland, including SSSI units¹⁷⁵ and veteran trees [APP-029, para 2.4.118 to 2.4.119 and APP-061].

5.5.15 The route between Pylons PC43 to PC62 across the Ash Level was amended to an alignment running north, rather than south, of the

¹⁷⁴ Holford Rule 3: Other things being equal, choose the most direct line, with no sharp changes of direction and thus with fewer angle towers. Note for Holford Rule 3: Where possible choose inconspicuous locations for angle towers, terminal towers and sealing end compounds.

¹⁷⁵ SSSI units are divisions of SSSIs used to record management and condition details. Units are the smallest areas for which NE gives a condition assessment. The size of units varies greatly depending on the types of management and the conservation interest.

retained PY 132kV line following consultation feedback, in particular from NE. The revised alignment would have less direct impact on key wader pools associated with areas under Higher Level Stewardship (HLS) schemes [APP-029, para 2.4.160].

The case made by other Interested Parties

5.5.16 Concerns raised by IPs regarding the Applicant's consideration of alternatives in relation to biodiversity fall into the following areas:

- LWSs and ornithology by the Kent Wildlife Trust (KWT);
- ancient woodland by the Woodland Trust and Broad Oak Preservation Society (BOPS); and
- ancient woodland and protected species at Kemberland Wood by a number of landowners local to that area.

Kent Wildlife Trust

5.5.17 KWT maintains its objection throughout the Examination based on its view that the Applicant has selected the wrong alignment [EV-005]. KWT considers that the alternatives were not considered in detail before route selection was made, and that there was not a sufficiently robust decision at the RCS stage. KWT considers that the selected Northern Corridor has higher frequency of flocks of waders and small groups of wildfowl than the Southern Corridor [REP2-082].

5.5.18 KWT also preferred the Southern Corridor option because it has concerns about the Northern Corridor's negative impacts on biodiversity receptors in respect of proximity to the Thanet Coast and Sandwich Bay Special Protection Area (SPA) qualifying species and two LWSs; South Richborough Pasture LWS and Chislet Marshes, Sarre Penn and Preston Marshes LWS, which are supporting sites for birds associated with the Thanet Coast and Sandwich Bay SPA [REP2-023, ID4.1.1].

The Woodland Trust

5.5.19 The Woodland Trust considers that the Applicant has not made satisfactory efforts to avoid effects on ancient woodland [RR-034].

South East Water

5.5.20 South East Water (SEW) presents its case that alternatives have not been adequately considered. Some of its arguments are on biodiversity grounds. We do not consider these arguments further here, because we have covered SEW's concerns regarding the alternatives the Applicant did consider in Chapter 4 and we consider the alternatives suggested by SEW in Chapter 6.

Broad Oak Preservation Society

5.5.21 BOPS suggests that the Applicant's case that undergrounding would cause loss of ancient woodland in Lynne Wood has not taken account

of the other adverse effects of an overhead line and that an overhead line would also affect a swathe of land including the ancient woodland. This is part of BOPS' case for undergrounding either for the route in its entirety or for a section in the vicinity of Broad Oak [REP3-043]. We have referred to this also in our Section 5.2 on landscape and visual effects.

Landowners at and near Kemberland Wood

- 5.5.22 In Relevant Representations (RRs), some IPs argued for alternatives that would avoid the ancient woodland of Kemberland Wood [REP1-012] and [RR-025]. Arguments are also put forward that the Applicant has not given sufficient attention to undersea routes such as that from Zeebrugge to Kingsnorth [RR-018]. This matter has been concluded in Chapter 4 of our report.
- 5.5.23 A Kemberland Wood landowner invited us to visit Kemberland Wood as part of an accompanied site inspection (ASI) and called for an open floor hearing (OFH) or issue specific hearing (ISH) on alternatives and sensitive protected habitats at Kemberland Wood and Broad Oak [REP1-012]. We visited Kemberland Wood on our ASI. Two landowners were present at this part of our ASI [EV-014(B)].
- 5.5.24 Representations were made at the OFH on 27 July 2016, at the ISH on landscape, visual and biodiversity effects including alternatives (the Landscape ISH) on 30 September 2016 and also at the third DCO ISH (DCO3). The point was made that landowners did not consider that alternative routes that would avoid Kemberland Wood had been satisfactorily considered [EV-073].
- 5.5.25 A landowner's submission after the OFH refers to consultation discussions about an alternative route, which it is reported the Applicant had stated would be more expensive. It is stated *"it is well established in case law that additional cost is not, of itself, a reason to dismiss a viable alternative to any impact on European Protected Species requiring derogation as being 'unsatisfactory'"* [REP3-045].
- 5.5.26 At the Landscape ISH, we asked the Applicant to guide Kemberland Wood landowners to the parts of the application which had covered consideration of alternatives. In response, it is submitted that there is a viable alternative which, while having some landscape implications (but which would have less if the line was buried) and no doubt some cost implications; that has a demonstrably lower environmental impact overall in terms of impact on relevant designations. The landowner considers the Applicant has wrongly applied Holford Rule 3 in rejecting the routing that avoids Kemberland Wood. He states that Rule 3 applies when *"all other things are equal"* [REP5-057]. Opinions were also set out on the importance of the protected species (dormice and bats), invertebrates and ancient woodland at Kemberland Wood [REP5-057].

The Applicant's responses

- 5.5.27 The Applicant does not accept the points made by KWT with regards selection of the Northern Corridor and collision risk for SPA birds. The Applicant sets out the case it has made in its Habitats Regulations Assessment (HRA) report [APP-119 and APP-120], which is reported on in Chapter 7 of our report. The Applicant reports that both the Royal Society for the Protection of Birds (RSPB) and NE maintain the view that the Northern Corridor would result in lower effects than the Southern Corridor [REP2-023, ID4.1.1]. In response to ExA second round questions (SWQ) on this matter the Applicant provided further justification for the findings [REP4-014]. This referred to:
- the existence at present of two overhead lines which have not required bird flight diverters and the proposed bird flight diverters that would be installed at Monkton (between Pylons PC41 and PC43) and at the Ash Level (between Pylons PC51 and PC60), secured through Requirement 11(R11) of the dDCO; and
 - the collision risk assessment (CRA) outcome which shows that golden plover would result in a low magnitude impact in terms of operational overhead line collision (which is not significant).
- 5.5.28 The Applicant also set out a full response on how all biodiversity effects are considered in the RCS [REP4-014, Q2.2.31 and Q2.2.33]. NE confirms that it agrees with the CRA and does not consider post-construction monitoring to be necessary [REP4-028, Q2.2.31].
- 5.5.29 The Applicant set out in the ES the reasons why the proposed route was not moved away from Kemberland Wood ancient woodland. This included the preference to avoid bringing the route closer to residential and commercial properties and the avoidance of a dog-leg with angle pylon and additional pylon in an otherwise straight section in a Special Landscape Area (SLA) [APP-029, para 2.4.112 and Table 2.6]. Further detail of the rejected change requests to avoid Lynne Wood and Kemberland Wood is provided [APP-029, Table 2.6].
- 5.5.30 The Applicant responded to the points made at the OFH setting out in detail the reasons why an alternative route avoiding Kemberland Wood was not adopted [REP3-022, Appendix A]. At the Landscape ISH, the Applicant confirmed that its ES had assessed the effects on and corresponding mitigation for the species mentioned, which are agreed with NE. In relation to the potential effects on bats and dormice, the Applicant confirmed that Letters of No Impediment (LoNI) have been obtained from NE, which denote agreement that all assessed effects have been appropriately mitigated [REP5-022, para 3.13].

The Panel's reasoning and conclusions on alternatives in relation to biodiversity

- 5.5.31 The ExA is satisfied that the Applicant has given appropriate consideration to alternatives with respect to biodiversity¹⁷⁶. As described in Section 5.2 of our report, we consider the strategic optioneering stages were assessed appropriately including giving regard to biodiversity. We consider the Holford Rules have been applied in an appropriate manner. We have considered KWT's views that the Southern Corridor would be preferable, but we do not accept this premise as we agree with the Applicant's assessment contained in the RCS and give weight to the views from NE as the statutory nature conservation body (SNCB).
- 5.5.32 The ExA is persuaded by the Applicant's responses to those who have challenged its consideration of alternatives in relation to ancient woodland generally and specifically at Kemberland Wood. The ExA is of the view that proper consideration has been paid to alternative routeings in respect of ancient woodland and particularly at Kemberland Wood.

ANCIENT WOODLAND

Policy

- 5.5.33 The policy test set out in EN-1 is whether the proposed development would lead to the loss or deterioration of ancient woodland or aged/veteran trees outside of such woodland. If so, the decision-maker should not grant consent unless the benefits (including need) outweigh the loss¹⁷⁷.

The Applicant's position

- 5.5.34 The ES assessment of ancient woodland is covered in a section on ancient woodland, veteran trees and lowland mixed deciduous woodland [APP-029, Section 9.17] and where ancient woodland and/or veteran trees form part of SSSIs and LWSs, such as the West Blean and Thornden Woods SSSI and the Little Hall and Kemberland Wood and Pastures LWS [APP-029, Section 9.12 and 9.14].
- 5.5.35 The ES concludes that the effects of the proposed development on ancient woodland (eg direct loss, fragmentation) would not be significant for construction or operation [APP-029, para 9.17.13 to 9.17.33 and para 9.14.19]. This is predicated on mitigation set out in Kemberland Wood Annexes in the BMS including coppicing by hand, installing conductors carried on foot, removal of wood chippings and reinforcement planting in the understorey [REP7-017, Annexes 3E.1 to 3E.3]. It states that the final design results in no fragmentation and

¹⁷⁶ EN-1, para 4.4.2 and 5.3.7

¹⁷⁷ EN-1, para 5.3.14

no permanent pylons located in ancient woodland [APP-029, Table 9.5].

Case made by other Interested Parties

- 5.5.36 The RR submitted by the Woodland Trust [RR-034] raised concerns over the direct effects of the proposed development on ancient woodland, as did three other IPs.

Canterbury City Council

- 5.5.37 At the start of the Examination, Canterbury City Council (CCC) suggested that the Applicant should make financial contributions for the enhancement of the ancient woodland harmed by the route [REP2-024, ID5.4.1]. On questioning, based on the Applicant's case that no ancient woodland would be lost, CCC later stated that it is satisfied that there is no loss of ancient woodland, and as such mitigation is not required. CCC also stated that the proposed coppicing is considered to be the most appropriate management regime in the circumstances [REP4-022, Q2.2.13]. This is agreed in the Joint Councils' final SoCG with the Applicant [REP8-014, ID4.6.13]. All the ancient woodland affected by the proposed development falls in the CCC district. Dover District Council (DDC), Thanet District Council (TDC) and Kent County Council (KCC) did not make submissions on this matter.

Kemberland Wood landowners

- 5.5.38 As reported above, Kemberland Wood landowners raised concerns over the effects the proposed development would have on the ancient woodland as well as on other biodiversity interest in Kemberland Wood. Their submissions in part relate to their arguments for an alternative route (reported earlier in this Section of our report), but also in connection with the adverse effects on the ancient woodland in Kemberland Wood [RR-018, REP1-012, REP3-045 and REP5-057]. Reference is made to a petition with 4,311 signatures, which is focussed on saving Kemberland Wood ancient woodland. A screen grab from the 38Degrees petition web site is provided [REP3-045].
- 5.5.39 The Applicant set out in detail how it had considered the effects on ancient woodland, referring back to the ES. It also explained that the trees that would be removed were not assessed to be ancient or veteran, and their removal is not considered to affect the site integrity of the Little Hall and Kemberland Woods and Pastures Local Wildlife Site or conservation status of the woodland. The Applicant also made a case for coppicing as appropriate management because Kemberland Wood has been managed by coppicing in the past [REP3-022, Appendix A].

The Woodland Trust

- 5.5.40 The Woodland Trust raised concern over the proposed mitigation strategy in respect to the loss of ancient woodland, and the means used to manage the woodland during the operation of the proposed

development to avoid interference with the overhead line. The Woodland Trust identifies the locations of most concern being where it considered there would be direct loss of ancient woodland in Beecham Wood, Kemberland Wood, Lynne Wood and Park Rough [RR-034].

- 5.5.41 There were ongoing differences between the Applicant and the Woodland Trust. It was reported at the Landscape ISH that a SoCG was in preparation following a meeting at which differences had been discussed. Versions of the SoCG were submitted at DL6 and DL7, with the final signed version submitted at DL8 [REP8-015]. Many matters previously under dispute were agreed in the final SoCG.
- 5.5.42 The matter which remained outstanding is that the Applicant considers that the operational management of the easements within ancient woodland would be its responsibility and would comply with the prevailing legal, policy and best practice guidance at that time. The Woodland Trust was not satisfied because the operational management of easements through ancient woodland (post-construction) is not secured in any way.
- 5.5.43 Another matter which was agreed, but that the ExA felt was not secured is the Woodland Trust's agreement relating to the use of locally sourced and grown plants [REP8-015]. To progress this issue, we asked whether there was the need for a requirement to cover matters to do with ancient woodland in the supplementary agenda for DCO3 [EV-066].
- 5.5.44 At DCO3, the Applicant explained that it considers stock provenance would be adequately covered in R8 of the dDCO [REP6-003], because stock provenance details are now included in the matters to be submitted for approval in the planting scheme at R8(2)(b) of the dDCO [REP7-009, para 4.78]. KCC and DDC confirmed that they were satisfied with this and that the consenting authorities would be the District Councils [EV-073].
- 5.5.45 At DCO3, the Applicant agreed that a management plan for the operational period for works within the easement areas of Kemberland Wood and Lynne Wood ancient woodland could be included in a requirement [REP7-009, para 4.79]. A new requirement (R20 of the dDCO) was included in the final version of the DCO, submitted at DL7 [REP7-003]. This sets out implementation of an Ancient Woodland Easement Management Plan (AWEMP), which must be approved by the relevant local planning authority in consultation with NE and the Woodland Trust. It requires all woodland management operations in the Kemberland Wood and Lynne Wood ancient woodlands to be undertaken in accordance with the AWEMP. The updated SoCG between the Applicant and the Woodland Trust confirms agreement between parties on this matter [REP8-015, ID3.1.1].
- 5.5.46 The Woodland Trust remained concerned about the scrutiny of future management in areas that are not within the West Blean and Thornden Woods (Lynne Wood) SSSI [REP6-014]. NE had raised the

matter of consent to carry out maintenance works in areas of SSSI needing consent from NE. The Applicant updated the Details of Consents and Other Licences document to include this [REP2-012]. NE agreed with the updated document [REP6-011, ID3.5.7].

Kent Wildlife Trust

- 5.5.47 KWT is content that the method statement and details set out for Kemberland Wood with regards ancient woodland is appropriate [REP2-082]. This is confirmed in response to the ExA's FWQ [REP2-083, Q1.2.36] and in the SoCG with the Applicant [REP2-023, ID3.3.2 and 3.3.4].

The Panel's reasoning and conclusions on ancient woodland

- 5.5.48 The ExA is satisfied that the Applicant's assessment of the effects of the proposed development on areas of ancient woodland is sound. We agree with the findings, which is that there is a neutral effect, which is not significant. The ExA is satisfied that the inclusion of the additional requirement (R20 of the final dDCO [REP7-003]), which covers management and maintenance in areas of ancient woodland during operation of the proposed development (ie beyond the life of the CEMP and the BMS) addresses the outstanding concerns we had with regards adverse effects on ancient woodland and compliance with EN-1¹⁷⁸.

NON-HRA ORNITHOLOGY

The Applicant's position

- 5.5.49 The Applicant's ES assesses the effects on bird species which are from designated biodiversity sites and are from priority habitats or are priority species [APP-029, Box 9.1]. Embedded mitigation measures are set out for the construction stage to avoid disturbance to nesting birds and displacement from foraging and loafing habitats. For the operational stage the installation of bird flight diverters as a precautionary mitigation measure is secured in two locations through R11 of the dDCO [APP-029, Table 9.6 and REP7-016].
- 5.5.50 A range of specific construction stage embedded mitigation is proposed and includes [REP7-016]:
- where possible no night working during the breeding season;
 - construction site lighting appropriately positioned to focus away from any identified nesting areas;
 - temporary visual screening installed at pylon working areas where requested to minimise visible disturbance from human presence and light and noise spill;

¹⁷⁸ EN-1, para 5.3.14

- restrict any unnecessary noise (e.g. shouting, vehicle horns, loud reversing alarms, etc) if works are during the sensitive breeding period/ sensitive wintering sites; and
- monitoring of Ash Level by Ecological CoW if piling and foundation works occur during critical periods (breeding/ wintering).

- 5.5.51 The assessment concludes that there would be no adverse significant effects on bird species. A summary rationale for the significance evaluation is given for each species assessed [APP-029, Table 9.13]. NE agrees with the methodology used for the CRA [REP6-011, ID3.4.3].
- 5.5.52 In SWQ we asked the Applicant to respond to differences of opinion [REP2-081 and REP2-090] expressed about bird species and numbers present compared with that recorded in the ES. The Applicant explained that simply because a species is recorded within the Zone of Influence of the proposed development, this does not warrant its inclusion as a species with sufficient 'biodiversity conservation value'. The Applicant listed the legislation which sets the 'biodiversity conservation value' of bird receptors that is of importance in EIA terms [REP4-014, Q2.2.29].

The case made by other Interested Parties

Kent Wildlife Trust

- 5.5.53 KWT was concerned about the potential risk of collision for golden plover because the assessment indicates that there would be a likely small impact upon this species, which it notes is a qualifying SPA species. As the Northern Corridor is closer to the SPA and also designated as LWSs, this adds to KWT's concern [REP2-023, ID4.1.1]. KWT maintained its objection and expresses disappointment that NE deems post-construction collision monitoring to be unnecessary, particularly in the Ash Level and Chislet Marshes [REP8-028]. This matter is also covered in Chapter 7 of our report.

South East Water

- 5.5.54 SEW raised concerns regarding bird collision risk in association with the cumulative effects assessment (CEA) which it felt should have been undertaken in the Applicant's ES. This has been reported in Chapter 4 of our report. The points raised by SEW were in connection with potential cumulative effects associated with the Broad Oak reservoir proposal. It did not raise concerns relating to other geographic locations.
- 5.5.55 In response to South East Water (SEW) representations regarding future-proofing against possible collision risk associated with the Broad Oak reservoir proposal (which are reported in Chapter 6 of our report), the Applicant submitted its 'National Grid's Protocol on Bird Diverters' (the Protocol). This details when and where bird flight

diverters are considered for use and the steps to be followed using a consultation process with the relevant SNCB [REP6-016, Appendix D].

Docker Farm tenants, the National Farmers' Union and St John's College, Cambridge

5.5.56 Concerns about bird collision risk south of Monkton were raised by a number of IPs who are landowners, tenants and agents in this area. This was because of mortality of large birds, such as geese and swans, which had occurred in the past in this area as a result of collisions with one of the 132kV overhead lines [REP5-053 and EV-048]. The NFU called for monitoring to establish if the proposed bird flight diverters between Pylons PC41 and PC43 were working, requesting the Panel to include this. The request was made in the knowledge that NE considers monitoring not to be necessary [REP3-046, para 3.2.5 and REP5-052, para 3.2.5]. The NFU reported that some landowners do not consider that the bird flight diverters will work in the vicinity of the proposed diamond cross-over¹⁷⁹ because of the bird mortality which had occurred previously [REP5-053, Section 2.6]. The NFU called for R11 of the dDCO to include reference to 'National Grid's Protocol on Bird Diverters' as had been suggested by the Panel [REP7-046, para 3.1.3].

Matters raised by the Panel

5.5.57 At DCO3, we asked the Applicant to provide suitable wording which the Secretary of State could use if he wished to secure reference to the Protocol in the DCO. We asked for this because of the sustained representations particularly from the NFU and KWT regarding the desirability of monitoring for bird collisions. Wording was provided, reluctantly, by the Applicant at DL9, with strong reservations about its use [REP9-001, point 5]. In providing it, the Applicant also refers to responses to questions and evidence given during the Examination to justify its position that the Protocol should not be included on the face of the Order. The main reasons being:

- an overhead line exists and would be replaced (there are no obligational requirements secured for the Protocol for the existing line);
- NE agrees that it is not necessary to undertake post collision risk monitoring in respect of the proposed development;
- there is no basis for its inclusion because a potential future need has not been determined by the ES assessment;
- it is possible that over time the Applicant's internal procedures may be updated or amended; and
- it is difficult to draft a requirement if there is no likely significant effect and no evidence for the need of such a requirement [REP7-009, para 4.72 to 4.74 and REP9-001].

¹⁷⁹ A location south of Monkton, where the proposed 400kV line would cross the retained PY 132kV line; described in Sections 5.2 and 5.3 of our report

The Panel's reasoning and conclusions on non-HRA ornithological effects and mitigation

- 5.5.58 The ExA is satisfied that the Applicant has undertaken a thorough assessment of the ornithological effects of the proposed development, which includes the proposed mitigation set out in the EEMS, BMS and CEMP. We are content with the findings of the assessment, which is that although there are low negative and very low negative effects (collision risk, disturbance and displacement) on some bird species, none are significant. The outstanding matters are a difference of opinion over whether monitoring should be undertaken in areas where bird diverters would be fitted and whether reference in the DCO to 'National Grid's Protocol on Bird Diverters' would assist the process in the future if bird mortality was discovered in the vicinity of the proposed overhead lines.
- 5.5.59 The ExA gives considerable weight to the opinion expressed by NE, which is that in its opinion the installation of any bird flight diverters proposed is on a precautionary basis, is not required for mitigation as NE does not consider that the impacts would have a likelihood of significant effects. We consider the Applicant has given consideration to whether there would be problems associated with bird collision risk along the line and that appropriate precautionary mitigation measures would be put in place¹⁸⁰. We have not therefore recommended monitoring.
- 5.5.60 We agree with the Applicant's statement that the locations where the use of bird diverters would be appropriate (as determined by historical collision evidence and the EIA) would have bird diverters fitted as part of the proposed development [REP7-009, para 4.72 to 4.74 and REP9-001]. These would be secured through R11 of the dDCO in two locations; and between Pylons PC41 and PC43 between Pylons PC51 and PC60.
- 5.5.61 The ExA is content that 'National Grid's Protocol on Bird Diverters' sets out a process which is suitable for addressing future occurrences of bird mortality on existing overhead lines. On further consideration of this matter, the ExA concludes that in this case we do not consider it necessary to secure the Protocol in the rDCO. This is because we have given weight to NE's position and the fact that bird diverters would be installed on a precautionary basis at two locations, one of which is at Monkton Marsh in the vicinity of the previous bird mortalities.
- 5.5.62 We are therefore satisfied with the drafting of R11 of the dDCO and include this in our rDCO. Possible wording has however been submitted by the Applicant, should the Secretary of State take a different view.

¹⁸⁰ EN-5, Section 2.7

DESIGNATED SITES

Statutory designated sites

- 5.5.63 Matters relating to internationally designated sites (European sites) are reported in Chapter 7 of our report. The only national designated site considered in the Applicant's ES is the West Blean and Thornden Woods (Lynne Wood) SSSI [APP-029, Section 9.12]. NE agrees that the detailed mitigation plan for West Blean and Thornden Woods SSSI has been developed in accordance with NE consultation; and that this would minimise negative effects on the SSSI (and its component ancient woodland) during construction. NE agrees with the specific mitigation statement and agrees that the mitigation plans illustrate sufficient mitigation to reduce the level of change and resultant effects to a non-significant level [REP6-011, ID3.5.1]. Matters relating to the ancient woodland element of the West Blean and Thornden Woods SSSI have been reported earlier in this Section of our report.
- 5.5.64 KCC raised concerns about access to the SSSI when the woodland is first coppiced as this could result in additional public access before a dense understorey develops. The Applicant set out the mechanisms by which newly coppiced vegetation is protected and pointed out that the part of the SSSI where works are undertaken is in private ownership. The Applicant and KCC agreed these points in the final SoCG [REP8-014, ID4.6.14].

Non-statutory sites

- 5.5.65 The Applicant's ES covers four LWSs, namely River Great Stour, Ashford to Fordwich LWS, Little Hall and Kemberland Woods and Pastures LWS, Chislet Marshes, Sarre Penn and Preston Marshes LWS and Ash Level and South Richborough Pastures LWS [APP-029, Sections 9.13 to 9.16]. None of the effects on the LWSs are assessed as significant in the Applicant's ES. The management practices which would be introduced to the Little Hall and Kemberland Woods and Pastures LWS are assessed as resulting in a very low positive effect because the structure and diversity in the affected area would be improved [APP-029, Table 9.13].
- 5.5.66 Representations made in connection with the Little Hall and Kemberland Wood and Pastures LWS relate to its ancient woodland content and protected species. We have reported these earlier in this Section of our report in connection with ancient woodland and alternatives. Likewise we have reported KWT's concerns regarding the Chislet Marshes, Sarre Penn and Preston Marshes LWS and the Ash Level and South Richborough Pastures LWS above and in Chapter 7 of our report because KWT's concerns were in the main related to bird species from European sites.
- 5.5.67 The Landscape and Habitat Enhancement Scheme (LHES) makes reference to possible measures for enhancing and extending Higher Level Stewardship (HLS) in new NE Countryside Stewardship Scheme

target options within the Ash Level [APP-123, para 6.3.6 and Appendix A]. The Applicant's responses to FWQ and SWQ gave details of what this might entail, but it is reported that negotiations with landowners are insufficiently advanced for the Applicant to give any assurances these would be implemented [REP2-016 Q1.2.67 and REP4-014, Q2.2.40].

- 5.5.68 The LHES is secured through a s106 agreement, an engrossed version of which was submitted at DL9 [REP9-001, Appendix 2]. The Applicant is committed to delivering such enhancement in principle, but the details are subject to landowner agreement, so may change in accordance with a procedure for a Replacement LHES set out in the s106 agreement.
- 5.5.69 As reported in Section 5.2 of this report, there is sustained disagreement between KCC and the Applicant over the possible LHES in the Ash Level, whereby the Applicant and DDC consider KCC's suggested planting proposals inappropriate. The Applicant confirms its intention to deliver enhancement measures similar to those employed in the HLS areas to increase wildlife-friendly habitat outside the Order limits [REP8-014, ID5.2.2].

The Panel's conclusions on designated sites

- 5.5.70 The ExA is satisfied that the Applicant's assessment of effects from the proposed development, including the mitigation, on designated sites is sound. We are content with the assessment findings, that the adverse effects are not significant. We give weight to the mitigation set out in the BMS and the EEMS and to where NE has agreed that mitigation for West Blean and Thornden Woods SSSI¹⁸¹. We have not given any weight to the LHES enhancement measures for land adjacent to HLS areas because the Applicant has been unable to provide evidence of its ability to secure these with the relevant landowners. However the principle of the proposed enhancements shows that the Applicant would take opportunities to enhance biodiversity interests¹⁸².

HABITATS

Woodlands and trees

- 5.5.71 The Applicant submitted an Arboricultural Impact Assessment (AIA) [APP-070] and an addendum [REP4-007]. This sets out a worst case scenario for tree, woodland and hedgerow removal and management and includes plans and vegetation loss calculations for the proposed development as shown on the design drawings; and also extended to include the limits of deviation (LoD). Replacement planting of all trees lost would be in a ratio of 1:1 for tree groups and 1:4 for individual trees [APP-070, Section 8.6]. The Applicant directed us to where the

¹⁸¹ EN-1, para 5.3.20

¹⁸² EN-1, para 5.3.4

explanations for 'management' (as opposed to 'removal') could be found [REP2-016, Q1.2.40].

- 5.5.72 The AIA and the BMS [REP7-017] form the baseline from which the DCO requires a Tree and Hedgerow Protection Strategy (THPS), under R6 and R10 of the rDCO, and a scheme for planting trees, hedgerows, shrubs, wild flowers grass etc, under R8 of the rDCO, to be prepared and submitted to the relevant local authorities prior to commencement of each stage of the authorised development. The planting scheme also has to accord with the Concept Mitigation Planting Plan (CMPP) [REP5-011], reported earlier in Section 5.2 of our report and the EEMS [REP7-016].
- 5.5.73 Our initial concerns about the removal and management of trees with tree preservation orders (TPO) adjacent to the Westbere construction compound are reported below under the section on reptiles because the tree-related 'removal' and 'management' would be a response to the need for preparing and managing a receptor site for reptile mitigation.
- 5.5.74 We are satisfied with the level of information included in the application; and with the need for future approvals for the THPS under R6 and R10 of the dDCO and for the planting scheme under R8 of the dDCO. This is because of the uncertainty about precisely which vegetation would need to be removed until further site investigation and pylon micro-siting has been undertaken and therefore what vegetation would need replacing.
- 5.5.75 We did have concerns about the mechanisms and means of ensuring persons with relevant qualifications would be those to make decisions about tree removal and mitigation planting. However we were reassured by the explanation that the relevant British Standard (BS 5837:2012) to which R10 of the dDCO refers, requires that the assessment of effects on trees must be undertaken by a qualified Arboriculturist [EV-051 and REP5-022, para 5.5 to 5.9]. The Applicant added the role of the Arboricultural CoW to the CEMP [REP6-021, Table 3C.2.4].
- 5.5.76 We give weight to the content of the engrossed s106 agreement which includes a service level agreement at Schedule 3, through which the relevant local authorities would be reimbursed for reasonable costs¹⁸³ in dealing with approvals for requirements [REP9-001, Appendix 2, Schedule 3]. We think this is important because the level of detail required in the discharge of R6, R8, R9 and R10 of the rDCO (as can be seen from the AIA, BMS and CMPP) is substantial, in our view, and would require considerable input of a technical nature to ensure compliance.

¹⁸³ Reasonable Costs means reasonable additional costs incurred by each Council in compliance with its obligations under paragraphs relating to the discharge of conditions during the post-decision period - as defined in the s106 agreement

- 5.5.77 The ExA is content that woodlands and trees would be protected from the adverse effects of the proposed development through the mitigation measures employed, which are satisfactorily secured in the rDCO¹⁸⁴.

Hedgerows

- 5.5.78 The Applicant's assessment concludes that embedded environmental measures would render any adverse effects to a level where the existing conservation status is maintained. The Applicant's assessment in the ES scopes out hedgerows which are not assessed as ecologically 'important' under the Hedgerow Regulations 1997 (as amended) because they are not assessed as being of biodiversity value due to lack of structure and diversity [APP-029, Section 9.18]. Any hedgerows scoped out which have inherent functional value for dependent receptors are assessed under those receptors; eg bats and dormice. All hedgerows affected are covered in the AIA [APP-070 and REP2-009], which includes a full hedgerow survey report. The historical value of hedgerows is considered in the Historic Environment Chapter of the ES and we consider it under Section 5.9 of our report.
- 5.5.79 No concerns were raised by IPs regarding the extent of temporary hedgerow 'removal' and 'management'. It was confirmed in response to FWQ that the totals for hedgerow 'removal' and 'management' scoped in to the ES are 249m and 428m respectively. The AIA which includes all hedgerows, irrespective of ecological significance, includes effects on all recorded hedgerows being 'removal' of 757m and 'management' of 1,752m [REP2-016, Q1.2.45].
- 5.5.80 As the ES states that impacts are predominantly to facilitate the creation of bellmouths from public roads to Order limit access roads, we wanted further reassurances that all measures to minimise removal were being adopted. The Applicant explained that the design process sought to minimise the impact of bellmouths and their visibility splays on hedges and trees while still maintaining safe conditions. Bellmouths would generally be located at existing field entrances to take advantage of existing gaps in hedges and agreement over using actual speeds for visibility splays, rather than the national speed limit, in order to reduce the requirement to remove trees and hedges has been agreed with KCC as the relevant highways authority [REP2-016, Q1.10.20]. This matter is also covered in Section 5.7 of our report.
- 5.5.81 As with the trees and woodland comments above, we are content that R6, R8 and R10 of the rDCO, together with the CEMP, BMS, EEMS and BS 5837:2012¹⁸⁵ provide sufficient provision to ensure the hedgerows

¹⁸⁴ EN-1, para 5.3.17 to 5.3.18

¹⁸⁵ BS 5837:2012: Trees in relation to design, demolition and construction. Recommendations

are protected from the adverse effects of the proposed development through the mitigation proposed¹⁸⁶.

Rivers and ponds

- 5.5.82 The assessment of effects from the proposed development on rivers and ponds is concluded as not significant [APP-029, Sections 9.19 to 9.20]. There are 22 ponds in or within 50m of the Order limits assessed as 'pond priority habitat' under the NERC Act 2006¹⁸⁷. The CEMP provides mitigation measures which would ensure retention and protection of the ponds and no adverse effects on river quality [REP7-018, Section 4.5].
- 5.5.83 The only matter raised was that the Environment Agency (EA) suggested a potential enhancement, when temporary culverts are removed from Internal Drainage Board (IDB) watercourses, could be provided by leaving capacity on the bank for elvers. The Applicant has agreed to enact any such reinstatement proposals agreed between the EA and River Stour IDB, provided they do not have a time or cost implication on the proposed development [REP8-013, ID3.4.7]
- 5.5.84 The Applicant is of the opinion this work is enhancement not mitigation and therefore should not be secured in the DCO or contained in the BMS. The EA and IDB agree, but consider that in principle, reinstatement enhancements should be pursued in every case subject to any site specific limitations, whilst recognising the financial constraints under which the Applicant operates [REP4-014, REP4-024 and REP4-038, Q2.5.12].
- 5.5.85 The ExA is satisfied that appropriate mitigation for biodiversity receptors of rivers and ponds would be secured through the CEMP and the BMS. As the EA and the IDB are in agreement that the reinstatement for elvers is enhancement, not mitigation, we are content that this is not specifically secured in the dDCO.

Invasive species

- 5.5.86 The Applicant's assessment covers Japanese Knotweed, water fern and Himalayan balsam. It concludes that the distribution of these plant species from surveys is insufficient to be significant; and embedded environmental measures address legal aspects via adherence to best practice guidelines [APP-029, Section 9.37].
- 5.5.87 A Kemberland Wood landowner notes the documented risk of spreading Japanese Knotweed due to ground clearance associated with proposed Pylon PC11 adjacent to Kemberland Wood and is concerned it could potentially be devastating to the ancient woodland as a whole [REP3-045].

¹⁸⁶ EN-1, para 5.3.15 to 5.3.18

¹⁸⁷ Natural Environment and Rural Communities Act 2006

- 5.5.88 The EA is content that, as stated in the ES, BMS and the CEMP, detailed plans for the control and management of relevant invasive species would be agreed prior to the relevant stage of works being commenced by the appointed contractor. The Applicant acknowledges the EA's comments about mink and confirms the same requirement to submit a plan for control would apply [REP8-013, ID3.4.11].
- 5.5.89 The ExA is satisfied that the controls for relevant invasive species are in place in the CEMP, BMS and EEMS¹⁸⁸.

The Panel's conclusions on habitats

- 5.5.90 The ExA is satisfied that the Applicant's assessment of the effects of the proposed development on habitats is sound and that appropriate mitigation is secured through DCO requirements in terms of future approvals that would be required from the local authorities and through the CEMP and BMS, all as indicated in the EEMS. We are satisfied that the habitats would be protected from the adverse effects identified in the ES and that appropriate mitigation measures are in place¹⁸⁹

SPECIES

European protected species

Bats, Dormice, Great crested newt

- 5.5.91 The Applicant's ES assessment covers bats dormice and great crested newt [APP-029, Sections 9.33, 9.34 and 9.30 respectively]. Species-specific construction stage mitigation is included for all three through species and location-specific method statements in the BMS [REP7-017], site-wide restrictions in the CEMP [REP7-018] such as speed limits (secured through R5 of the rDCO) and limited night-time working (secured through R7 of the rDCO); and in the case of bats through ongoing coppice management and new planting under the dismantled PX 132kV route.
- 5.5.92 The Applicant predicts that all three European protected species (EPS) could suffer disturbance from increases in noise, vibration and lighting during construction. In terms of the effect of increased noise and vibration for bats the Applicant states that because there would be limited night-time construction working (R5 and R7 of the rDCO [REP7-003]), this would minimise the exposure of noise and vibration effects on bats. Negative effects would therefore be short-term, localised and of very low magnitude [APP-029, para 9.33.36].
- 5.5.93 Dormice are also nocturnal and thus the Applicant states that the majority of high impact construction activities would occur in the

¹⁸⁸ EN-1, para 5.3.18

¹⁸⁹ EN-1, para 5.3.17 to 5.3.18

daytime, thereby minimising disturbance to dormice. In any case, the Applicant explains that the dormouse habitat adjacent to working areas is assessed as poorer quality habitat (therefore may be used intermittently by dormice, but not regarded as optimal habitat) and/or are well connected to hedgerow networks of similar habitat [APP-029, para 9.34.20]. Any effect of increased noise and vibration during construction on great crested newt is assessed as being temporary, short-term and within habitats of lower quality/ negligible suitability [APP-029, para 9.30.19].

- 5.5.94 In terms of lighting, the Applicant points to the embedded mitigation measures. This includes the development of a sensitive lighting strategy, the submission of which for later approval is secured through R6(1)(d) of the rDCO [REP7-003]. We welcome the addition of NE to the parties whom the relevant planning authority should consult as appropriate to the relevant plan, and consider NE's involvement in consideration of the lighting scheme would ensure the plan's suitability in terms of measures to minimise light spillage.
- 5.5.95 Significance of effect for all three species is assessed as not significant. The magnitude of change is predicted to be very low negative for bats; low positive for dormice as a result of improved connectivity and nesting and foraging habitat; and neutral for great crested newt [APP-029, Table 9.13].
- 5.5.96 The final SoCG between the Applicant and NE states that NE agrees that all EPS issues are to be addressed through standing advice notes, regulated with derogation licences obtained as required. It states that LoNIs have been issued in respect of dormice and great crested newt and is awaiting further information about additional bat surveys [REP6-011, ID3.4.4]. In fact LoNIs for all three species (bats, dormice and great crested newt) were submitted by the Applicant at DL2 [REP2-016, Q1.2.49, Q1.2.51 and REP2-017, Appendix E].
- 5.5.97 A Kemberland Wood landowner expressed concerns over effects on bats, dormice and great crested newt in Kemberland Wood [RR-018]. The Applicant gave a full response including references to the survey work it had undertaken for great crested newt, which concluded that the pond on the western edge of Kemberland Wood is unsuitable to support a persistent and viable great crested newt population due to the large fish population and the survey found no great crested newt to be present [REP2-016, Q1.2.53].
- 5.5.98 At the Landscape ISH, views were expressed on the risks to protected species at Kemberland Wood. This was followed up at DL5 with a statement about the potential for direct or indirect impacts on bats, dormice and great crested newts through construction and maintenance activities. It was argued that the Habitats Directive tests over whether there are satisfactory alternatives to the impacts on the EPS concerned and carried out by the Applicant do not stand up to scrutiny because there is a clear and less damaging route [REP5-057]. At the Landscape ISH, the Applicant pointed out that it had obtained

LoNIs from NE, which denote agreement that all assessed effects have been appropriately mitigated [REP5-022, para 3.13].

- 5.5.99 The ExA is satisfied that the necessary controls and mitigation are in place with regards bats, dormice and great crested newt. Based on the mitigation secured in the rDCO and the evidence provided in terms of the LoNIs issued by the SNCB, we are of the view that the EPSs that are present in the study area are protected from the adverse effects of the proposed development¹⁹⁰.

Otter

- 5.5.100 The Applicant assesses the effects on conservation status for otter to be not significant, taking account of the embedded mitigation measures and the method statement in the BMS, which applies to all areas of the Order limits with actual or potential otter habitat [APP-029, Section 9.35]. No matters were raised during the Examination in connection with otter. The ExA has no concerns in relation to this species and is content with the Applicant's assessment¹⁹¹.

Other protected species

Reptiles

- 5.5.101 The Applicant assesses the effects on reptiles to be not significant when the embedded mitigation is taken into account. The surveys found that six of the 22 locations surveyed qualify as 'key reptile sites', as they support three reptile species (common lizard, slow worm and grass snake) and/ or they support an assemblage of species [APP-029-Section 9.31]. Two areas would require fencing and translocation of reptiles; one of which is the construction compound at Westbere. Details for the receptor-site creation/ enhancement, translocation and ongoing management at Westbere are set out in the BMS site specific method statements [REP7-017, Annexes 3E.2 and Figure 3E.1.40].
- 5.5.102 We had concerns about the extent of vegetation removal and management that would be necessary in order to create suitable habitat for reptiles on the receptor site to the west of the compound. This would include the removal of trees protected by a group TPO. The Applicant explained that the trees that would be removed from the TPO group would be the smaller scrub woodland trees on the edge of the group. The Applicant adds that whilst a worst case scenario has been presented for the ES assessment, it is not considered that in conducting these works that all trees would be removed. More mature trees would have crown reduction and pruning to increase light levels [REP2-016, Q1.2.47].

¹⁹⁰ EN-1, para 5.3.17

¹⁹¹ EN-1, para 5.3.3

5.5.103 We remained concerned about the residual flexibility in works that could be undertaken on the tree group and raised this matter again in SWQ and at DCO3. At this point the Applicant explained it would not be possible to provide a detailed plan of the works, because the light levels required for the reptiles needs to be assessed on site throughout the period of time the receptor site would be in use. However the Applicant suggested it could notify the relevant officer at CCC when works on the TPO group were to take place, so that the officer could be invited to the site to observe works, with a record of what was removed and pruned issued thereafter [REP7-009, para 4.67 to 4.71]. This commitment was subsequently added to the BMS [REP7-017, Annex 3E.2, para 8.1.3 and 9.1.3].

5.5.104 The ExA also requested an amendment to Schedule 13 of the dDCO to make clear the purpose for the removal of overhanging branches and trees would relate to reptile mitigation and not visibility splays. This amendment was made and is included in the rDCO. The ExA is now satisfied that the tree works associated with the reptile translocation are adequately constrained and that the reptile assessment and mitigation is sound.

Badger

5.5.105 The Applicant's survey work for badgers confirms the presence of badgers within the Order limits, but due to the confidential nature of badger records, precise details have been provided in a confidential report rather than with the main ES. The ES explains that badgers are protected for welfare issues rather than conservation, so the predicted effects and proposed mitigation are to ensure no contravention of the relevant legislation¹⁹² and are discussed in those terms [APP-029, Section 9.32].

5.5.106 Embedded environmental measures to minimise effects on badgers and ensure compliance with the legislation are set out in the EEMS [REP7-016] and a method statement in the BMS [REP7-017]. There are also provisions which would benefit protected species in the CEMP, including a 10mph speed limit in Order limits to reduce the likelihood of vehicle collisions [REP7-018, para 4.8.2]. The Applicant has assessed compliance with the Protection of Badgers Act 1992 and has concluded that the effect on badgers would not be significant.

5.5.107 The ExA is satisfied that appropriate mitigation would be delivered though the BMS and the CEMP.

Water vole

5.5.108 The Applicant assesses the effects on conservation status for water vole as not significant, taking account of the embedded mitigation measures and the method statement in the BMS, which applies to all

¹⁹² Protection of Badgers Act 1992

areas of the Order limits with actual or potential water vole habitat. The mitigation proposed would include all affected habitat being reinstated and culverts having been designed to maintain connectivity during construction [APP-029, Section 9.35].

- 5.5.109 It is agreed in the SoCG between the Applicant and the EA that the EA does not foresee any issues with respect to water voles, on the basis that an approach of avoidance of water vole habitat is proposed, including clear span bridges for temporary crossings where necessary. The EA considers the Applicant's approach is acceptable. Whilst the Applicant does not anticipate that a license in respect of water vole would be required, it is also agreed between the Applicant and the EA that if licencing were subsequently required, such enhancements would be secured outside the BMS through derogation licencing conditions [REP8-013, ID3.4.8].
- 5.5.110 It is stated in the SoCG between the Applicant and NE that NE understands that the proposed development would not result in licensable activities in respect of water voles. The Applicant incorporated minor amendments to the wording of the water vole method statement in the BMS as suggested by NE [REP6-011, ID3.5.6].
- 5.5.111 In light of the agreements between the Applicant and the EA and NE, the ExA is satisfied that the Applicant's assessment and mitigation set out in the BMS method statement provide an appropriate level of protection for water vole during construction. The provision for applying for a licence should licensable activities become necessary during construction is further evidence that the appropriate parties would be involved in consenting in the future if necessary.

Terrestrial invertebrates

- 5.5.112 The Applicant assesses the effects on conservation status for terrestrial invertebrates to be not significant, taking account of the embedded mitigation measures and the site-specific method statements and receptor mitigation measures set out in the BMS, [APP-029, Section 9.36]. Mitigation measures for the temporary disturbance and displacement predicted would include new planting areas, retention of dead wood and creation of log piles as compensatory habitat and retention of woodland soils and coppice stools.
- 5.5.113 As with other protected species reported above, an increase in artificial light levels could result in adverse effects on terrestrial invertebrates. The measures described and the approvals required for a sensitive lighting strategy, as described earlier in this Section would also apply to terrestrial invertebrates.
- 5.5.114 No matters were raised during the Examination in connection with terrestrial invertebrates apart from in connection with Kemberland Wood. The point was made that eleven species of invertebrates of

high nature conservation value were recorded in Kemberland Wood. These include several rare and uncommon invertebrates such as the rare psychodid, *Trichomyia urbica* and the tree bumblebee (facts consistent with evidence in the ES). It is stated that these would be directly affected by the proposed development [REP5-057].

- 5.5.115 The ExA has no concerns in relation to terrestrial invertebrates and is content with the Applicant's assessment. We are satisfied that the BMS site-specific method statement for Kemberland Wood, the Figure which shows log pile creation and the EEMS which confirms new planting, provide appropriate mitigation [REP7-017, Annex 3E.1, cover note 11 and Figure 3E.1.13a and REP7-016].

The Panel's conclusions on species

- 5.5.116 The ExA is satisfied that the Applicant's assessment of the effects of the proposed development on species is sound and that appropriate mitigation is secured through DCO requirements in terms of future approvals that would be required from the local authorities and through the CEMP and BMS, all as indicated in the EEMS. We are satisfied that the species and their habitats are protected from the adverse effects of the proposed development assessment through appropriate measures¹⁹³.

DECOMMISSIONING

- 5.5.117 Decommissioning effects are predicted for each site, species and habitat in the Applicant's ES [APP-029, Chapter 9]. It is stated that method statements that reflect the legislation and biodiversity prevalent at the time would be developed and employed. These would form part of the written scheme of decommissioning subject to local authority approvals submitted six months prior to work commencing that R19 of the rDCO secures. The Panel is satisfied that R19 of the rDCO provides the necessary controls for future approvals prior to decommissioning.

COMPLIANCE WITH LOCAL POLICIES

- 5.5.118 The Woodland Trust raised some concerns regarding compliance with CCC local policies in its RR [RR-034]. However these points were not sustained [REP8-015]. As stated in Section 5.2 of our report, the SoCG between the Applicant and the Councils [REP8-014, ID4.24.1] confirms agreement between the parties on the content of the chapter of the Planning Statement which covers local planning policy [APP-127, Chapter 7 and Appendix C]. The Panel is content that the proposed development is compliant with the local policies as set out in the Planning Statement for biodiversity.

¹⁹³ EN-1, para 5.3.3 and 5.3.17

OVERALL CONCLUSIONS ON BIODIVERSITY AND GEOLOGICAL CONSERVATION

Geological conservation

5.5.119 The ExA is satisfied with the findings presented in the ES with regards sites of geological conservation importance. The ExA is satisfied with the explanation for scoping out that is given, which has been agreed with NE. There was no evidence presented to the contrary. The ExA considers that the Secretary of State can conclude there would be no adverse impact on any sites of geological conservation importance.

Biodiversity

5.5.120 The ExA is satisfied that the duty that every public body has, with respect to conserving biodiversity under the NERC Act¹⁹⁴, has been met through the consideration of the effects on biodiversity and mitigation during the course of the Examination. In complying with this, we consider due regard has been given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

5.5.121 Our conclusions which follow do not cover those set out in Chapter 7 for Habitats Regulations matters, nor do they cover specific biodiversity matters related to the Broad Oak reservoir proposal, which are reported in Chapter 6 of our report.

5.5.122 The ExA is satisfied that the Applicant's assessment, which concludes that no significant adverse effects would arise on biodiversity receptors as a result of the proposed development, is sound¹⁹⁵. We are satisfied with the findings. We believe that the evidence presented demonstrates that the embedded mitigation and the future approvals, required through the rDCO would secure the necessary mitigation. We have given weight to the mitigation which has been agreed with NE and to the LoNIs which have been issued¹⁹⁶.

5.5.123 The post consent approvals would present some considerable work for the relevant planning authorities in assessing the schemes, plans and strategies for approvals. In this regard we give weight to the Service Level Agreement, which forms part of the s106 agreement and which reimburses Councils for reasonable costs associated with undertaking these approvals. We consider the Service Level Agreement meets all the tests of development consent obligations set out in EN-1¹⁹⁷. The ExA gives some weight to elements of the LHES, to be delivered through the s106 agreement; but confirms this, in our view, is enhancement not mitigation¹⁹⁸.

¹⁹⁴ Natural Environment and Rural Communities Act 2006

¹⁹⁵ EN-1, para 5.3.3

¹⁹⁶ EN-1, para 5.3.19

¹⁹⁷ EN-1, para 4.1.8

¹⁹⁸ EN-1, para 5.3.4

- 5.5.124 We think the Applicant has given appropriate consideration from a biodiversity perspective to alternatives in arriving at the alignment for the proposed development¹⁹⁹. The matters which arose from this, over which there was greatest concern are the effects on ancient woodland and those on birds. We are now satisfied that concerns raised about the adverse effects on ancient woodland, which extend beyond the period covered by the CEMP and BMS are now satisfactorily addressed through the securing of an approval for an AWEMP.
- 5.5.125 Some IPs expressed disappointment that NE advised ongoing monitoring for bird collision was not necessary. In this regard we gave full consideration to the inclusion of reference to the Applicant's Protocol on bird flight diverters in a requirement in the DCO. In the end, we did not include this in R11 of the rDCO for the reasons set out earlier in this Section of our report.
- 5.5.126 The ExA is satisfied that on geological conservation grounds there is no reason to prevent the Secretary of State granting the Order. In terms of biodiversity, the ExA is satisfied that the findings of the Applicant's assessment are sound and that there are no significant adverse effects on sites, habitats and species that would arise from the proposed development. We are satisfied that the necessary mitigation measures have been secured in the rDCO. In our opinion there is no matter which would prevent the Secretary of State from granting the Order.

5.6 NOISE, VIBRATION AND ELECTRIC AND MAGNETIC FIELDS

INTRODUCTION AND POLICY CONTEXT

- 5.6.1 This section deals with the impact on residents, wildlife and biodiversity arising from noise, vibration and electric and magnetic fields that would be caused by the proposed development during construction, operation and decommissioning.
- 5.6.2 EN-1 provides the policy context against which our consideration of noise and vibration issues is to be assessed²⁰⁰. EN-5 provides technology specific details in relation to noise and vibration and Electric and magnetic fields (EMF)²⁰¹.
- 5.6.3 Relevant representations were received from 83 individuals or organisations. Of these:
- four individual respondents raised concerns over operational noise;
 - five raised concerns about construction noise including all three District Councils;

¹⁹⁹ EN-1, para 4.4.2 and 5.3.7

²⁰⁰ EN-1, para 5.11

²⁰¹ EN-5, para 2.9 and 2.10

- the three District Councils raised concerns about vibration; and
- five individual respondents raised concerns about EMFs.

5.6.4 The Joint Councils in their Local Impact Report [REP2-061, Section 7] raised a specific concern about working hours during the construction phase of the proposed development. The individual matters identified in representations have been addressed in the following sections.

NOISE AND VIBRATION

5.6.5 The Applicant has produced an assessment of the potential noise and vibration effects of the construction, operation and decommissioning of the proposed development. This is included in the Environmental Statement [APP-030, Chapter 11], produced following a Scoping Opinion from the Secretary of State, and a consultation process and engagement with the Joint Councils. The Panel notes that the ES addresses all of the elements that EN-5 specifies for inclusion in the noise assessment.

5.6.6 The ES makes reference to the National Planning Policy Framework (NPPF), paragraph 123 and also reviews local planning policies. The Panel considers that none of these policies add materially to the protection afforded at a national level in respect of noise and vibration.

5.6.7 The ES sets out details of the data gathering methodology, consultation process and the establishment of the noise and vibration baselines. EN-1²⁰² requires the impacts of noise and vibration from the proposed development on wildlife and biodiversity to be assessed in accordance with the biodiversity and geological conservation section (5.3) of the NPS.

5.6.8 The Applicant assesses the potential for increased noise and vibration to affect ecological receptors through disturbance in ES Chapter 9 (Biodiversity) [APP-029]. This is considered by the Panel in Section 5.5 of our report. The Applicant's No Significant Effects Report (NSER) [APP-119 and APP-120] assesses the potential for noise disturbance to affect species which are qualifying features/ interests of European sites. Chapter 7 of our report considers the likely significant effects of the proposed development on European sites alone and in combination with other plans or projects.

Construction noise

5.6.9 The Applicant's approach to the assessment of noise generated during the construction and decommissioning phases of the proposed development uses criteria set out in British Standard BS5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites: Noise (BS5228-1).

²⁰² EN-1, para 5.11.2

- 5.6.10 The Applicant's noise assessment includes all areas up to 300 metres from the proposed site of construction, in accordance with the precepts of BS5228-1 [APP-030, para 11.7.10]. The methodology used is that recommended in the BS and the distances from the works at which threshold noise limits will be met are calculated for every construction and decommissioning operation. While road traffic noise was scoped out of the assessment, noise from traffic movements on temporary site access tracks is taken into account in the Applicant's assessment.
- 5.6.11 Residential receptors within 50m of a construction or dismantling site (Ulcombe Gardens, Headcorn Drive, Bricknor Close and Bluebell Woods) are likely to experience high noise levels. The Applicant states that embedded mitigation in the form of acoustic screening and restricting work hours would reduce noise levels to acceptable levels [APP-030, Table 11.26]. Embedded noise mitigation measures are set out in the Embedded Environmental Management Scheme (EEMS) and in the Noise and Vibration Management Plan (NVMP) [REP7-016 and REP7-021]. In this case, additional restrictions to working hours would be applied. Details of the restricted hours are included in the NVMP [REP7-021, para 1.4.7]. The NVMP is secured under R5 of the rDCO as part of the Construction Environmental Management Plan (CEMP).
- 5.6.12 The assessment shows that beyond a 60 metre envelope all construction traffic and works activities would be within the daytime noise limits: for weekend working a 170 metre envelope would apply. Where properties lie within these envelopes then mitigation detailed in the EEMS and the NVMP would apply, with normal working hours specified and again secured as part of the CEMP [REP7-016 and REP7-021].
- 5.6.13 Work that is proposed to be undertaken outside the core working hours is defined in the NVMP and is considered to generate low noise levels [REP7-021, para 1.4.5]. This work would be subject to the application of Control of Pollution Act (CoPA) procedures as noted below. The NVMP is agreed by the Councils [REP8-014].
- 5.6.14 Construction noise would be managed through the CEMP [REP7-018] and the NVMP [REP7-021] contained within it and secured by Requirement (R) 5 of the DCO.
- 5.6.15 The Councils raised the issue of working hours in various representations [RR-028, RR-029 and RR-068], in the Local Impact Report [REP2-061, Section 7.7] and at Issue Specific Hearings (ISH). They argued that the hours should be similar as those imposed on other major infrastructure projects. During the course of the Examination, the Councils and the Applicant were able to agree the approach to working hours and these are reflected in R7 of the rDCO. This is confirmed in their signed SoCG [REP8-014].
- 5.6.16 Nethergong Camping also raised concerns about construction noise and its effect on visitors to the campsite at an Open Floor Hearing

[EV-018]. They asked if the Panel would visit the campsite and this was done on 25 July 2016 as part of the Accompanied Site Inspection (ASI) carried out that day [EV-014B]. A separate Unaccompanied Site Inspection (USI) on the public highway outside the campsite was undertaken by the Panel after dark on the evening of 18 October 2016 [EV-002(D)] in order to experience the level of background noise at the site, which the owners maintained was very low.

- 5.6.17 In Second Written Questions, the Panel asked the Applicant for its views on an additional requirement in the draft DCO, that would restrict noisy construction work from taking place during the busy tourist season [PD-009, Q2.5.15]. Instead of including a separate requirement, the Applicant proposed an amendment to the CEMP so that main activities close to the campsite would be undertaken between January and May, which would fall outside the peak visitor season and during months when the campsite would be closed. Furthermore, the Applicant undertakes in the CEMP to preclude the piling, excavation and construction of pylon foundation and pylon assembly and erection between May and September [REP7-018, para 4.10.6]. Other less noisy operation would be undertaken during this period, with the more general constraints on working hours and noise limits continuing to apply.
- 5.6.18 The Panel accepts that the Applicant's analysis of noise has been carried out in accordance with the advice given in BS5228-1. It includes a comprehensive assessment of noise impacts on individual properties within the areas likely to be affected by the construction and demolition process.
- 5.6.19 Details of the working hours on two major construction schemes (HS2 and Crossrail) were submitted to the Examination by Dover DC as examples of the type of arrangements that the Joint Councils sought [REP5-051]. In considering these the Panel concluded that the arrangements for the proposed development put forward by the Applicant are more restrictive in terms of working hours than these examples and are likely to result in less impact from noise.
- 5.6.20 The Panel considers that a comprehensive analysis of construction noise impacts has been carried out and appropriate mitigation measures have been developed and secured through the CEMP and the NVMP under R5 of the DCO. The working hours secured are considered to be reasonable in the light of arrangements used on the examples submitted of other major infrastructure projects. We also consider the arrangements to avoid noisy construction activities taking place in the vicinity of Nethergong Campsite which are detailed in the CEMP and secured at R5 of the rDCO, provide appropriate mitigation in this noise sensitive location. We are therefore satisfied that the proposed development would not result in any unacceptable construction noise.

Vibration

- 5.6.21 The Applicant's approach to the assessment of vibration generated during the construction and decommissioning phases of the proposed development uses criteria set out in BS5228-2:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites: Vibration (BS5228-2).
- 5.6.22 The Applicant notes that no baseline vibration surveys have been carried out because there are no obvious sources of vibration near the line of the proposed development, the only possible sources in the vicinity being a railway line and road traffic [APP-030, para 11.11.1]. The Applicant assesses the significance of effect as minor adverse or negligible and thus not significant [APP-030, para 11.11.7]. While the NVMP provides a table of vibration action levels [REP7-021, Table 1.5] this only indicates the likely effect of various levels of vibration. The document also contains details of a noise and vibration monitoring procedure [REP7-021, Section 1.10].
- 5.6.23 The Joint Councils raised vibration as an issue in Relevant Representations (RR) [RR-028, RR-029 and RR-068], in the Local Impact Report [REP2-061, Section 7.7] and as a non-agreed matter in their joint SoCG [REP2-024, ID 5.5.6]. In this last document it was asserted that a baseline should be established against which future measurements could be assessed. Mitigation of vibration effects were sought in part through management of working hours. In the final SoCG the Applicant confirmed that vibration would be managed through the NVMP [REP8-014, ID4.7.13]. This would ensure that the Applicant's contractor would be made aware of the need to use the CoPA Section 61 process in cases where significant noise and/or vibration was expected [REP7-021, para 1.6.4].
- 5.6.24 All vibration matters were agreed between Councils and the Applicant in the final SoCG [REP8-014, ID4.7.13].
- 5.6.25 The Panel accepts that the Applicant's approach to vibration has been in accordance with the advice given in BS5228-2. It concludes that the effects of vibration are likely to be localised and short term. The nature of these effects means that further analysis is unlikely to produce accurate predictions of their impact. We also note the processes in place under the CoPA to deal with nuisance from this source set out in the NVMP [REP7-021, para 1.6.1]. The Panel considers that all matters relating to construction vibration have been properly assessed and that appropriate methods of mitigation have been included in the NVMP and secured under the rDCO. We are therefore satisfied that the proposed development would not result in any unacceptable vibration.

Operational noise

- 5.6.26 The Applicant sets out that overhead line generate noise by corona discharge when surface electrical stress exceeds inception level. This

effect is more pronounced during and after rainfall or fog when water droplets on the lines initiate multiple corona discharges. This is known as 'wet noise'. Prolonged dry weather allows contaminants to accumulate on the lines also giving rise to noise; this is known as 'dry noise' [APP-030].

- 5.6.27 The overall approach to operational noise assessment is set out in the ES [APP-030, Section 11.14]. It establishes a framework of sensitivities for receptors, magnitude of operational effects based on noise predictions, and significance criteria.
- 5.6.28 EN-5 states that methods of noise assessment based on relevant British Standards such as BS4142 are appropriate for dry weather conditions²⁰³. It indicates that for wet weather conditions a method based on National Grid report TR(T)94,1993²⁰⁴ is likely to be acceptable. The Applicant's Operational Noise Assessment describes how these two methods are used in this instance [APP-107, para 1.1.2].
- 5.6.29 The Applicant's operational noise assessment involves a desk assessment of sensitive receptors within approximately 300m of the proposed 400kV route centreline [APP-030, para 11.13.1]; night-time background noise measurements at locations representing receptors [APP-106]; and analysis using the methods noted in the previous paragraph. Inspections of overhead lines would be carried out by helicopter while access for maintenance would be infrequent. Both these operations would be of low impact and short duration and are scoped out of the assessment [APP-030, para 11.13.7].
- 5.6.30 The Panel considers that the Applicant's approach to the analysis of operational noise is appropriate.
- 5.6.31 The Applicant's analysis of operational noise identifies no high sensitivity receptors, residential receptors of medium sensitivity being the highest category identified. For the majority of the receptors the magnitude of effect is assessed as low or negligible.
- 5.6.32 Medium sensitivity residential receptors where there may be a moderate significance of effect are identified in [APP-030, Table 11.31]. These are:
- 4 and 6 Broad Oak Road;
 - 10 Shalloak Road;
 - 3 Shalloak Road;
 - caravan at Kemberland Farm; and
 - Tile Lodge Farmhouse.

²⁰³ EN-5, para 2.9.8 and 2.9.9

²⁰⁴ Technical Report No. TR(T)94, 1993. A Method for Assessing the Community Response to Overhead Line Noise, National Grid Technology & Science Laboratories

- 5.6.33 These receptors are assessed as experiencing a medium magnitude noise effect during wet weather and a low magnitude noise effect during dry weather apart from 3 and 10 Shalloak Road where the effect is assessed as negligible.
- 5.6.34 The significance of effect for these properties during wet conditions is assessed as moderate adverse but not significant. The significance of effect during wet conditions for all other properties assessed is minor adverse or negligible and so not significant.
- 5.6.35 The Applicant points out that rainfall data provided by the Meteorological Office indicate that in this area wet weather conditions and thus wet noise would be likely to occur during 5% of a year (2012 data): dry conditions and hence dry noise would be likely to occur during 95% of the year. It also points out that the assessments are based on night-time readings when background noise levels are at a minimum and suggests that the wet noise assessment is a worst case and will therefore over-estimate the impact of wet noise occurring during daytime [APP-030, paras 11.15.14 and 15].
- 5.6.36 The proposed route of the 400kV overhead line passes over or near a variety of land uses including PRowS, Nethergong Campsite and sites of nature conservation, industrial use and farm land. The Applicant considers that exposure to operational noise will be short term and occur mainly during daylight hours [APP-030, para 11.15.17].
- 5.6.37 EN-5, para 2.9.12 notes that Applicants should consider the positioning of lines to help mitigate noise. The Applicant indicates that mitigation of noise was one of the considerations in the selection of the cable route [APP-030, Table 11.1]. There is evidence that this was one topic that the Applicant considered when incorporating design changes in response to comments received. As referred to earlier in this chapter, in the region of Nethergong Camping, as a result of the consultation and design review process, alterations to the positioning of pylons in this area were made *"to minimise noise and visual effects on the residential properties and those camping at the campsite at Nethergong."* [APP-029, para 2.4.123].
- 5.6.38 Nethergong Camping remained concerned about operational noise levels. The operational noise levels at Nethergong Camping are assessed by the Applicant as negligible during dry conditions and low adverse during wet conditions with absolute noise levels during dry conditions being well below the BS8233²⁰⁵ levels for suitable sleeping conditions [APP-030, para 11.15.20].
- 5.6.39 EN-5 also indicates that the appropriately sized conductor arrangement should be used to minimise potential noise²⁰⁶. The Applicant notes that the arrangement and size of conductors has been

²⁰⁵ BS8233 Noise Assessment

²⁰⁶ EN-5, para 2.9.12

chosen to help minimise potential operational noise [APP-29, para 3.4.1]. This matter was explored further during the ISH on construction effects including those on agriculture held on 29 September 2016. The action note from this meeting produced by the Applicant [REP6-006, Action No 7] explains that *"For the Richborough Connection Project, the required electrical rating can be achieved using conductors with a diameter of 31.5 mm arranged in a twin bundle [2 individual conductors]. However, for the Richborough Connection Project, it is possible to use individual conductors with a diameter of 33.4 mm using the same bundle arrangement and pylon types The larger conductors will, however, result in a small, but worthwhile, improvement in the operational noise performance of the overhead line and for this reason the choice has been made to design the overhead line using the larger conductor."*

- 5.6.40 EN-5²⁰⁷ notes that the Applicant should have considered mitigation by the use of quality assurance through manufacturing and transportation to avoid damage to overhead line conductors which can increase potential noise effects, and ensuring that conductors are kept clean and free from surface contaminants during stringing/installation. The Applicant specifies in the CEMP that quality assured processes must be used in the manufacture and delivery of conductors and that care must be taken to keep them free from surface contaminants during their inclusion in the works [REP7-018, para 4.9.3].
- 5.6.41 The Panel concludes that the Applicant's analysis of operational noise has been carried out in accordance with the relevant standards set out in EN-1 and EN-5 using the methodology prescribed.
- 5.6.42 The Panel does not disagree with the Applicants assessment of operational noise levels at Nethergong Campsite. We have also considered the effect of rainfall generally on the campsite. In our view, wet weather may just as easily occur during the day as during the night and may well be accompanied by wind, which would cause noise in the trees on the campsite, and that the noise of rainfall on a tent or caravan would not be inconsiderable. Given these factors, we are content that operational noise in relation to the proposed development would not be significantly different to existing noise levels.
- 5.6.43 The Panel also concludes that the mitigation measures proposed by the Applicant are appropriate and reflect the policy requirements of EN-5. We are therefore satisfied that the proposed development would not result in any unacceptable operational noise.

ELECTRIC AND MAGNETIC FIELDS

- 5.6.44 The Applicant has produced a separate Electric and Magnetic Fields Report (EMFR) [APP-122] which supports the scoping out of electric and magnetic fields (EMFs) from the ES. This provides an assessment

²⁰⁷ EN-5, para 2.9.12

of the likely significant health and environmental effects of EMFs associated with the proposed development. It is included because the Applicant acknowledges the extent of public concern regarding EMFs [APP-029, para 5.3.17]. This describes the origin and nature of EMFs and notes that those produced by overhead power lines are sometimes referred to as 'non-ionising' radiation. The EMFs considered here are a function of the operational phase of the proposed development and that there are no considerations relating to the construction and decommissioning phases.

- 5.6.45 Five RRs mentioned potential health hazards related to high voltage cables [RR-004, RR-012, RR-035, RR-077 and RR-078]. Three mentioned cancer or childhood cancers in general terms [RR-004, RR-012, RR-077, and RR-078].
- 5.6.46 In response to a first written question [REP2-016, Q1.8.25] the Applicant addressed the issues raised in the RRs and noted that the EMFR [APP-122, para 1.3.33] underlines that *"All the relevant scientific evidence on EMFs was considered fully in the process of establishing the exposure guidelines that apply in the UK. Those exposure guidelines together with the policy on optimum phasing (and other precautionary policies that relate only to low voltage equipment) are considered by the PHE to be the appropriate response to that evidence."*
- 5.6.47 The EMFR assesses the Applicant's proposals in relation to the EN-5 EMF requirements [APP-122, Table 1.1] setting out if and how each requirement is met.
- 5.6.48 EN-5 notes at paragraph 2.10.9 that the application should be in accordance with the International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines and should evidence this using the requirements of 'Power Lines: Demonstrating compliance with EMF public exposure guidelines - a voluntary Code of Practice'. The EMFR [APP-122, Section 3.2 and Table 3.1] describes the calculation process and gives results that indicate that the proposal is in accordance with the guidelines.
- 5.6.49 EN-5 notes at paragraph 2.10.10 that there is no direct statutory provision in the planning system relating to protection from EMFs and the construction of new overhead power lines near residential or other occupied buildings. It refers to the minimum height, position, insulation and protection specifications in the Electricity Safety, Quality and Continuity Regulations 2002 and details of the minimum acceptable heights for overhead cables carrying electric currents of varying voltages as required by this Regulation are set out in the EMFR [APP-122, para 1.3.52 and Table 1.3]. The EMFR notes [APP-122, para 3.2.4] that a minimum conductor design ground clearance of 8.1m has been included in the design. This is in excess of the minimum required by the Regulation.

- 5.6.50 EN-5, paragraph 2.10.11 notes that the electricity industry currently applies optimal phasing to 400kV overhead lines to help minimise the effects of EMFs. A Code of Practice 'Optimum Phasing of high voltage double-circuit Power Lines - A voluntary Code of Practice' defines the circumstances where optimal phasing will be used. The EMFR notes that the 400kV overhead lines have been designed with transposed phasing meaning that it is optimally phased in accordance with the Code of Practice as required by EN-5 [APP-122, para 3.2.7].
- 5.6.51 The Panel notes the concerns raised regarding the association between power lines and cancer including childhood cancer, and the fears experienced by members of the public. However, it recognises both the lack of an established causal relationship and that the proposed development would satisfy current regulation, policy and good practice by a wide margin. We therefore agree with the scoping out of the EMFs from the ES.
- 5.6.52 The Panel agrees with the Applicant's assessment that the proposed development would produce EMF exposures that lie within the relevant public exposure guidelines and that optimal phasing has been incorporated in the design of the overhead line conductors. In addition the ground clearance of the conductors is in accordance with the relevant Regulations and the latest advice on health matters relating to EMFs has been considered.

CONCLUSION

- 5.6.53 The Panel agrees that the impacts of noise, vibration and EMFs have been properly assessed for all phases of the proposed development. The Panel concludes that the measures proposed by the Applicant and agreed by the Councils for the mitigation and control of these adverse effects means that these effects do not provide any reason to prevent the Order being made.

5.7 TRAFFIC AND TRANSPORTATION

INTRODUCTION AND POLICY CONTEXT

- 5.7.1 This section deals with the impact of the proposed development on the existing highway network and the impact on public rights of way (PRoW) that are crossed by the proposed development.
- 5.7.2 EN-1 identifies traffic and transport as a topic that should be considered in the assessment of any nationally significant energy infrastructure project.²⁰⁸ EN-1 also notes the importance of transport impacts in the wider context of sustainable development²⁰⁹.

²⁰⁸ EN-1, para 5.13.1

²⁰⁹ EN-1, para 5.13.2

- 5.7.3 The National Planning Policy Framework (NPPF) outlines the role played by transport policies in the provision of sustainable development. Paragraph 14 notes a presumption in favour of sustainable development, while paragraph 32 notes that development should only be prevented on transport grounds where residual cumulative impacts are severe.
- 5.7.4 PRowS and accesses onto existing highways and travel plans are within the remit of local planning policies²¹⁰. We include consideration of these in our wider consideration of the effects of traffic and transport arising from the proposed development.
- 5.7.5 The proposed development would necessitate the construction of over 40 bell mouth accesses from the public highway onto site access roads, the construction of two temporary works compounds and the installation of two temporary bridges over the River Stour. While this work would be contained within a relatively short construction period its impact on the existing road network would be distributed over the length of the proposed development.
- 5.7.6 Traffic generated by the construction of the proposed development would have the potential to impact the Local Roads Network (LRN) and disrupt PRowS. Removal of pylons, overhead lines and other equipment could also have a similar impact on the roads networks and PRowS.
- 5.7.7 The Panel investigated the Applicant's approach to traffic and transport matters by considering the principal issues noted above in the light of the information supplied by the Applicant and the views expressed by Interested Parties (IPs) both in written and oral submissions at various ISHs and in response to the Panel's written questions. Primary responsibility in these areas lies with Kent County Council (KCC) as highway authority for the LRN since no motorway or trunk roads would be affected by the proposed development.
- 5.7.8 Relevant Representations (RRs) were received from 83 organisations and individuals. Four raised concerns directly relating to traffic and transport and two raised concerns about public rights of way. Of these, KCC as highway authority raised issues about both highways and PRowS, and Dover DC raised PRow issues. No other district, parish or town council raised issues relating to traffic, transport or PRowS in their RRs. However Broad Oak Preservation Society

²¹⁰ Local planning policies include:

CCC LP Policy C1 - Control the level and environmental impact of vehicular traffic. Seek the construction of new roads and /or junction improvements that will improve environmental conditions and /or contribute towards the economic well-being of the district.

TDC LP Policy TR3 - Proper provision for transport infrastructure that is necessary and relevant to the development to be permitted shall be secured by legal agreement.

DDC CS Policy DM12 - Applications involving the creation of a new access or the increased use of an existing access onto a trunk or primary road will not be permitted if there would be a significant increase in the risk of accidents or traffic delays unless sufficient mitigation is provided.

(BOPS)²¹¹ raised a number of detailed points about traffic management in the vicinity of Broad Oak village [REP2-076].

THE EXISTING ROAD NETWORK

Methodology

- 5.7.9 EN-1 states that the Applicant's ES should include a transport assessment using the NATA/WebTAG methodology stipulated in Department for Transport guidance if the project is likely to have significant transport implications²¹². While the Applicant has produced a transport assessment this has been developed on the basis of guidance given in the Planning Policy Guidance Note 13 on Transport rather than the methodology specified in EN-1 [REP3-007, para 2.6.1].
- 5.7.10 The Applicant's presentation of traffic flow information is based on weekly traffic figures rather than on the more usual peak hour flow figures used in the traffic analysis methods promoted in EN-1 [REP3-007, Annex 10A.3].
- 5.7.11 The Applicant, KCC and Highways England (HE) were asked to comment on the appropriateness of the methodology used in the transport assessment [PD-006, Q1.10.1 to 6]. The Applicant's response [REP2-016, Q1.10.1 to 6] was that the methodology had been agreed with KCC and that HE saw no need to be involved with the scheme. This was confirmed by KCC [REP2-069, Q1.10.1 to 6]. Although HE did not respond to the specific question, it confirmed that it had no objections to the proposed scheme [AS-002]. In the LIR it is noted that KCC as highway authority had agreed a SoCG with the Applicant and was in agreement on all relevant specific matters relating to highways [REP2-061, para 7.5.1].
- 5.7.12 The Applicant notes in its traffic assessment that no traffic flow data is available for the LRN [REP3-007, para 4.5.2]. Traffic measurement surveys were carried out at a wide range of traffic junctions throughout the area of the proposed development. These traffic counts included counts of HGVs, turning traffic at junctions and traffic speed measurements. No analysis of junction capacity or queuing lengths has been carried out and the assessment concludes that

"The additional number of vehicles per day that are estimated to be generated by these works is relatively small compared to the volumes of existing traffic using the road network that provides access to the sites. The addition of construction traffic to the existing flows is, therefore, anticipated to be negligible, with no significant impact upon junction capacity. Consequently no junction capacity assessment work has been considered necessary." [REP3-007, para 6.5.1].

²¹¹ Broad Oak Preservation Society describes itself as "an unincorporated body whose membership extends to all residents of the village of Broad Oak". There is more detail in Section 5.2 of our report

²¹² EN-1, para 5.13.3

- 5.7.13 In its final SoCG on highways and PRowS KCC agreed that the methodology used in the Transport Assessment was acceptable [REP4-009, ID 3.3.1]. This was confirmation of KCC's answers to Q1.10.1 and Q1.10.2 submitted for DL2 [REP2-069].
- 5.7.14 The transport assessment was not carried out using the methodology specified in EN-1, but this was accepted as adequate by the local highway authority (KCC). Although it has reservations about this, the ExA concludes that on balance for this scheme, where transport impacts are primarily related to the relatively short construction and decommissioning stages, the transport assessment methodology followed, is acceptable.

Effects on the road network of construction, maintenance and decommissioning

- 5.7.15 The highway authority has been involved in the development of the Construction Traffic Management Plan (CTMP) and the final version of the SoCG between KCC and the Applicant confirms that there are no principal or specific matters outstanding between the parties relating to highways or PRowS [REP4-009, paras 4.2 and 4.3]. This position is confirmed by the absence of reference to these matters in the SoCG with the Joint Councils [REP8-014, para 5.1.1 and Table 5.1].
- 5.7.16 The highway access routes that are proposed to be used during the construction of the proposed development are identified in the CTMP [REP8-011 Tables 3G.3.2 to 9]. The observance of these routes should ensure that the shortest routes would be used between site accesses and primary distributor roads, that centres of population and other sensitive areas would be avoided as far as possible and that travel by construction traffic would be minimised [REP8-011, para 5.3.1].
- 5.7.17 The Panel asked how control of construction traffic near schools would be secured and which schools would be affected [PD-009, Q2.10.1]. The Applicant responded with details of the schools concerned (Chislet Church of England Primary School and Spires Academy) and proposed that construction traffic would be prevented from using highways outside these schools during morning and afternoon arrival and departure periods through discussion with KCC officers and school representatives [REP4-014 ID 2.10.1]. The final SoCG with KCC confirms this approach [REP4-009 ID 3.4.3] and the CTMP was updated at the end of the Examination to secure this commitment [REP8-011 Table 3G.3.1 ID8].
- 5.7.18 In our view, the highway access routes identified in the CTMP appear practical and sensible in avoiding, as far as possible, difficulties with narrow rural roads and built up areas and conflict with local roads.
- 5.7.19 In so far as potential difficulties with traffic at the schools named above are concerned, we initially suggested the Applicant consider the introduction of a new requirement specifically to address this matter [PD-012]. However, we were subsequently convinced by the

Applicant's response at DL7 [REP7-005] in which it argued that the commitment was already included in the CTMP at Table 3G.3.1. Furthermore, KCC issued a verbal statement at the third DCO ISH (DCO3) confirming that it did not see the need for a separate requirement on this matter: this was later confirmed in writing [REP7-047]. As such, the ExA is content that a process is in place, should the Order be made, to manage the effects of construction traffic in the vicinity of Chislet Church of England Primary School and Spires Academy.

- 5.7.20 The Applicant explains that maintenance of the proposed development during its operational phase would be limited to a small number of light vehicle movements to allow for foot patrol inspections and subsequent infrequent repairs and routine maintenance works. Given the durability of the construction materials it is likely that very limited maintenance activities would occur within the first 12 to 15 years of operation. If any are required then only a small number of HGV movements would be generated and this would have a negligible effect on traffic and transport during the operational stage of the development [APP-029, para 10.7.10 Bullet 5].
- 5.7.21 R16 of the rDCO secures the place of the highway authority in approving the design and layout of new or existing accesses to the highway to be used by vehicles in connection with the proposed development. It also ensures that accesses are constructed in accordance with the approved details and that the appropriate road safety audits are carried out on highway works authorised under the rDCO.
- 5.7.22 The Applicant predicts that the impact of decommissioning is likely to be similar to that of construction albeit dismantling is a quicker process than erection [APP-029, paras 3.4.96 to 3.4.99].
- 5.7.23 The Panel considers that the Applicant has, on balance, assessed the effects on the road network of road traffic generated during the construction, maintenance and decommissioning of the proposed development correctly, albeit that in the case of decommissioning the effect on receptors could well have changed in the possibly 80 years between the two events.

Appropriateness of the extended use of temporary traffic orders

- 5.7.24 Schedule 12 of the rDCO, which is given effect by Article 39, lists streets that would be subject to Temporary Traffic Orders, variously prohibiting vehicular access at any time, imposing waiting restrictions and imposing speed limits. Schedule 7 of the rDCO, given effect by Article 13, lists streets or PRoWs to be temporarily stopped up [REP7-004].
- 5.7.25 KCC did not object to the wording of Articles 13 and 39 and confirmed in its SoCG that it agreed with the powers to undertake works to the

highway as contained in the draft DCO [REP4-009, ID3.5.4]. At DCO1 KCC undertook to check the contents of the relevant schedule of the DCO [EV-025, Action 13]. KCC confirmed that it was content with the schedule [REP3-040, Action 13].

- 5.7.26 Article 39(1) of the rDCO states the imposition of the Orders described in Schedule 12 are *"Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated..."* Article 13(5) of the rDCO prevents the temporary stopping up, alteration or diversion of the streets or public rights of way specified in Schedule 7 without first consulting the street authority.
- 5.7.27 The Public Rights of Way Management Plan (PRoWMP) gives details of the closures anticipated for the PRoWs identified in Schedule 7 of the DCO [REP7-020, Table 3H.3.1]. It provides for each PRoW an estimate of the likely closure period and when it is to be instituted.
- 5.7.28 The Panel considers that the terms of Articles 13 and 39 together with information contained in the PRoWMP provide the local traffic and street authorities with sufficient information and powers to ensure that Temporary Traffic Orders and Stopping Up Orders are applied in an appropriate manner.

Construction traffic management

- 5.7.29 The Applicant has produced a CTMP as part of the Construction Environmental Management Plan (CEMP) and this has been amended and updated by the Applicant during the Examination [REP8-011]. The CTMP is secured by R 5(2)(d) of the rDCO which requires that the CEMP incorporates a CTMP. R5 specifies that the CTMP is to be implemented as approved and that *"any works must be carried out in accordance with the approved plan."* [REP7-004].
- 5.7.30 The contents and mitigation measures detailed in the CTMP were agreed with KCC on 18 May 2016. This was confirmed at DL3 as detailed in the SoCG between the parties [REP3-011, ID3.5.5]. The document considered at that time was the original version of the CTMP [APP-068]. The examination process subsequently resulted in a number of changes to the CTMP at DLs 3, 6,7 and 8 as a result of written and oral questions arising from the Panel's FWQs, SWQs and ISHs. KCC submitted a final signed SoCG at DL4. It did not update its position after that time but (as referred to earlier in this section), did request a statement be read out to the Panel at DCO3 confirming that it had no matters of disagreement with the Applicant.
- 5.7.31 In its WR, BOPS complains that traffic management proposals in the dDCO have not been the subject of any public consultation and it had received the impression at the consultation events that construction traffic would be limited to main roads, but that was not to be the case. It refers to proposed road closures and diversions that would prevent a way through. BOPS made detailed comments on the Applicant's proposals based on its local knowledge of the village on the following

roads: Shallock Road/ Sweechgate, Barnets Lane and Mayton Lane. BOPS was concerned about availability for emergency access along narrow lanes where road closures are proposed. BOPS also considered that at least one of the bellmouths proposed could be dispensed with [REP2-076].

- 5.7.32 The Applicant provided a detailed response to BOPS's WR, taking each point at a time. This explained why certain locations had been selected, why trackway along the route could not be used because of adverse effects on sensitive biodiversity receptors. It also confirmed that road closures would only be for very short periods, notice would be given to affected residents and access for emergency vehicles would be given at all times [REP3-013, part 2.1].
- 5.7.33 The CTMP contains details of the access and route strategy for the proposed development including access points to the site, the roads to be used to reach these accesses, a review of local highway issues, and routing for construction traffic. It sets out a signing strategy to ensure these routes and accesses are properly used, including provision for temporary diversions.
- 5.7.34 The CTMP also contains descriptions of a comprehensive array of mitigation measures for potentially adverse impacts from construction traffic.
- 5.7.35 Details of the management structure and processes necessary to manage and ensure compliance with these measures are also set out in the CTMP. This includes the appointment of a Transport Co-ordination Officer who would monitor contractor obligations with regard to the CTMP; liaise with the relevant highway authority and resolve issues and problems through the liaison with relevant stakeholders [REP8-011, section 6].
- 5.7.36 Whilst we appreciate the concerns raised by BOPS and acknowledge there will be some local inconvenience, we are persuaded by the description of the role of the Transport Co-ordination Officer in the CTMP, that there would be an appropriate point of contact for local stakeholders such as BOPS, who has a responsibility to resolve problems.
- 5.7.37 As discussed in Chapter 10, the Panel had various concerns about the drafting of R5, including the proposed use of tailpieces to the requirement which could enable the local authority to agree to the making of changes to the CTMP and CEMP outside the DCO process. In Chapter 10, we argue for the removal of these tailpieces in order to ensure proper control over the proposed development and to prevent changes to documents which are central to the DCO.
- 5.7.38 We are satisfied that, with the removal of the tailpieces from R5, the CTMP is appropriately secured in the rDCO and would provide a solid framework from which any adverse environmental effects during construction of the proposed development caused by traffic and

transport could be mitigated and managed and that its establishment and operation are appropriately secured by R5 of the rDCO.

Operational considerations

- 5.7.39 The Applicant does not anticipate any adverse effects on the transport network during the operational phase of the development as traffic movements will be limited to a small number of light vehicle movements to allow for foot patrol inspections, subsequent infrequent repairs and routine maintenance works. Should maintenance works be required this would generate a small number of HGV movements. On this basis effects on traffic and transport during operation were scoped out of the EIA [APP-029, para 10.7.10].
- 5.7.40 Means of accessing the proposed development for maintenance purposes are shown on the Access Routes - Maintenance drawings [APP-034, Figs 3.16a to h]. The ability to maintain the proposed development would be secured under Article 4 of the rDCO while the power to create and acquire rights and to impose restrictions over the access routes would be secured under Article 21 of the rDCO. These routes are shown as Class 2 Access land on the Land Plans [REP8-008]. The Applicant notes that access for maintenance purposes would be limited to annual inspections on foot. In the event of a fault a repair team of up to six people would be required but only for a short time. Access would be achieved using relatively light vehicles and equipment travelling along designated routes from agreed entry points from the highway. Refurbishment of the overhead lines would be somewhat more intrusive albeit this is anticipated to be necessary every 40 to 50 years [APP-029 Para 3.4.91to3.4.94].
- 5.7.41 Operation of the proposed development raises no long term issues relating to traffic, transport or public rights of way. The Panel concludes that it will not impact the local highway network adversely and further consideration of this aspect of the proposed development is not necessary.

Cumulative effects of traffic from other proposed developments

- 5.7.42 The updated cumulative impacts of traffic from other developments in the area, both consented and contemplated, have been assessed in an addendum to the ES [REP6-018, Section 4.8]. This identifies nine committed developments that could enter their construction phase at the same time as the proposed development and a further four currently at pre-application stage that could also give rise to cumulative effects.
- 5.7.43 The analysis carried out in the ES Addendum [REP6-018, para 4.8.12] concludes that the effect of the additional HGV traffic generated by the Richborough Connection Project is likely to be moderate adverse. If the strategic development sites at Sturry/ Broad Oak and Hersden are undertaken at the same time as the Sturry Link Road and the Richborough Connection project (which the Applicant states is

unlikely) it is estimated that there would be an additional 400 daily movements along the A28. This is predicted to produce moderate to major adverse cumulative effect on the A28 and the surrounding highway network including Herne Bay Road, Broad Oak Road, Shalloak Road and Vauxhall Road and the effects on receptors would be significant [REP6-018, Table 4.4].

- 5.7.44 In response to this addendum, we suggested the inclusion of a new requirement in the dDCO which would give powers to the highway authority to prevent construction traffic from the proposed development using junctions in defined areas during hours of peak traffic flow [PD-012, pg 7]. We discussed this requirement at DCO3 [EV-074].
- 5.7.45 The Applicant was adamant that there was no need for restrictions on construction traffic because the amounts generated by the proposed development would be small and that this traffic would have as much right as any other traffic to use the public highway.
- 5.7.46 KCC has consistently maintained that there is no need for additional analysis of the impacts generated by the proposed development. A written submission which KCC asked to be read out at DCO3 (and later confirmed at DL7 [REP7-047]) asserts that
- "Sub clause (2) (of the proposed additional Requirement) is not considered to be necessary. The junctions mentioned are already at saturation point during peak times and the traffic generated during the construction period will not have any noticeable impact on this part of the network."*
- 5.7.47 This follows the comment contained in their final SoCG [REP4-009, ID3.3.3] that
- "KCC and National Grid agree that further junction capacity analysis was not required as the increase in traffic flow on the highway network would not result in an increase in queue lengths or delays at junctions along the construction route."*
- 5.7.48 In our view, the evidence points to the fact that certain junctions are already saturated at time of peak traffic and this is exacerbated by the frequent closure of the railway level crossing on the A28 at Broad Oak. The addition of construction traffic from the proposed development and the other developments identified in the ES addendum would make traffic queue lengths greater and add to driver inconvenience and the economic cost of delays.
- 5.7.49 That aside, we are of the opinion that a new requirement in the dDCO would not be the most appropriate way to mitigate adverse impacts given that firstly, we do not consider there is likely to be substantial

HGV traffic²¹³ and secondly, because we consider that the CTMP contains the more appropriate method by which the construction effects of the proposed development on junction capacity can be identified and managed by the local highway authority in liaison with the main contractor at that time. We therefore consider that, with the CTMP in place, cumulative effects of traffic from the proposed development and other proposed developments would not be unacceptable.

PUBLIC RIGHTS OF WAY

- 5.7.50 Matters relating to PRowS such as the visual effects of the proposed development and socio-economic matters are dealt with under Sections 5.2 and 5.4 of this Chapter. This section deals only with PRowS as a means of pedestrian access to the countryside.
- 5.7.51 The issues raised in the Joint Councils' LIR [REP2-061] were:
- the long term closure of the Saxon Shore Way long distance footpath;
 - completeness and accuracy of PRow usage survey information;
 - management of PRowS during construction period; and
 - publicity for closures.
- 5.7.52 These points have been the subject of discussions between the Applicant and KCC and progressed through SoCG where agreement has been reached on all matters relating to PRowS [REP4-009, ID3.2.6 and para 4.3.1]. The agreement has been based on the development of the PRowWMP [REP7-020]. This document sets out how the Applicant has identified PRowS and describes the survey work carried out in assessing the impact of the proposed development on them. It then describes a management plan for the affected PRowS [REP7-020]. The PRowWMP concludes with a list of the PRowS affected, giving details of location, reason for closure, duration, start and end dates of closure, type and period of closure and diversion route [REP7 -020 Table 3H.3.1]. Three iterations of the document were produced to include responses to issues identified during the Examination and in separate discussions between the Applicant and the Joint Councils. The SoCG between the Applicant and KCC indicated acceptance of the PRowWMP [REP4-009, ID3.2.6]. However further versions of the PRowWMP were produced to secure notification of footpath closures to parish councils and to land agents [REP7-020].
- 5.7.53 Article 13 of the rDCO deals with the temporary stopping up of streets and PRowS, while Schedule 7 lists those streets and PRowS to be so affected. While there are no timescales attached to the temporary stopping up of PRowS, their management will be subject to the terms set out in the PRowWMP [REP7-020, Table 3H.3.1]. This gives indicative periods for temporary closure for each of the affected PRowS. Of the

²¹³ EN-1, para 5.13.11

29 PRowS concerned the indicative closure periods are generally two day managed events within a longer overall programme period.

The Saxon Shore Way

- 5.7.54 The Applicant states the construction of two temporary long span bridges would be required to provide construction access over the River Stour at Minster Marshes and near Richborough [APP-029, para 3.4.57]. This would provide access to pylon construction sites that would otherwise be inaccessible. The safe construction and dismantling of these temporary bridges would require the longer term closure of the Saxon Shore Way (EE42) as set out in the PRowMP [REP7-020, Table 3H.3.1].
- 5.7.55 This indicates a 30 days closure south of Marsh Farm in Quarter2 of 2018 for bridge construction and 35 days for access road construction both within a 10 week period. It notes in both cases that the closures would be long term managed with the potential for several week-long closures. The removal of this bridge would require 45 days closure over 12 weeks in Quarter 2 and Quarter 3 of 2020. The Table also indicates a 30 days closure at Richborough in a ten week period in Quarter 3 of 2017 for bridge construction and 45 days for access road removal in a 12 week period in Quarter 2 and Quarter 3 of 2020. It notes in the former that this would be a long term closure, while the latter would be a short term managed closure with two-day closures.
- 5.7.56 From the above it appears likely that passage along the section of the Saxon Shore Way between Minster Marshes and Great Stonar, as shown in APP-019 Sheets 15 to 18, would not be possible for the general public for a large proportion of the time between Quarter 3 of 2017 and Quarter 2 of 2020. However, the Applicant has proposed a diversion route in consultation with the Joint Councils which would maintains continuous pedestrian access to and from the end of the Saxon Way and thus its connectivity with other elements of the long distance footpath network. The diversion route is approximately the same length as the portion of the Saxon Way that would be temporarily closed.
- 5.7.57 The Panel undertook unaccompanied site inspections during the Examination in order to view both the existing Saxon Shore Way and the proposed diversion [EV-002(D)]. Although the closure of the footpath will mean disruption for those using the long distance footpath, the Panel is content that the temporary diversion put forward by the Applicant does provide a satisfactory alternative of similar length and accessibility. Furthermore, the Panel notes that KCC and the local authorities were also content with the proposed diversion.

Publicity for closures

- 5.7.58 DDC in its Relevant Representation [RR-029] raised concerns about the proposed temporary closures of the Saxon Shore Way and the

means of publicising these closures. It was suggested that this latter aspect of the perceived problem would be a suitable matter for a s106 agreement between the Applicant and the Councils

- 5.7.59 As part of the SoCG with KCC the Applicant agreed to work with KCC to include information on proposed mitigation on the 'Explore Kent' website [REP3-011, ID3.2.1]. As discussed in Section 5.4, an engrossed s106 agreement is in place between the parties which would secure a financial contribution to facilitate a PRoW Updates Scheme.
- 5.7.60 While the Saxon Shore Way is not strictly part of the 'continuous signed and managed route around the coast' referred to in paragraph 5.10.16 of EN-1 it does provide access to what was historically part of the coastline and provides access to the existing coastal paths in this region of the Kent coast.
- 5.7.61 Given the temporary nature of the closure of the Saxon Shore Way and the proposed diversion and the engrossed s106 to which we give weight as discussed in Section 5.4, the Panel is content with arrangements for temporary closures of the Saxon Shore Way.

Management of public rights of way during construction period

- 5.7.62 The Applicant has produced a PRoWMP which has been the subject of discussion and updating through the course of the Examination. The final version of the document [REP7-020] which would be secured through Requirement 5 of the DCO as part of the CEMP contains provision for signage, information on closures, the various forms of PRoW closures, safety measures, condition surveys, reinstatement and inspections.
- 5.7.63 The contents and mitigation detailed in the PRoWMP have been agreed by KCC as highway authority in a SoCG [REP4-009, ID3.2.6].
- 5.7.64 The management plan will ensure that KCC PRoW officers would be involved at all stages of the process. Their agreement would be required in deciding the type and size of fencing to be used to provide safe corridors for footpath users.
- 5.7.65 The Panel considers that the appropriate management of PRoWs during the construction period would be achieved by the use of the measures set out in the PRoWMP.

OTHER TRAFFIC AND TRANSPORT MATTERS

Travel Plan

- 5.7.66 EN-1 states that where appropriate the Applicant should prepare a travel plan²¹⁴. The CTMP [REP8-011, Section 5.19] contains an outline of the elements to be included in a Travel Plan that would be prepared by the Applicant's contractor once appointed.
- 5.7.67 The Panel considers that the steps proposed by the Applicant provide an effective framework for a Travel Plan. The CTMP, as noted above, is secured by R5 of the DCO. R 6 would ensure that a Travel Plan is submitted to the relevant planning authority for approval, to be implemented from the commencement of the construction period and in full for the duration of the construction stage of the proposed development.

Effects on river navigation

- 5.7.68 Navigation of the River Stour from its mouth toward Canterbury is possible as far upstream as Sturry. This stretch of the river is used extensively by a variety of craft, with a number of businesses operating pleasure boats in addition to private users.
- 5.7.69 The Applicant has consulted with the EA, MMO, and others about the impact of the proposed development on river traffic [APP-124, pages 231, 298, 308]. This would only occur during the construction phase of the development, related primarily to the construction of two temporary bridges over the river at Richborough and at Minster. These bridges would be required to carry temporary site access roads over the River Stour to enable construction traffic to reach areas of the proposed development that could not otherwise be reached [APP-029, paras 3.4.55 to 57].
- 5.7.70 Article 38 of the rDCO deals with the temporary closure of, and works in, the River Stour and was not considered to be contentious by IPs during the Examination. In the EA's final SoCG with the Applicant, the Applicant agrees to provide prior notification to both the EA and Sandwich Harbourmaster if complete closure of the River Stour to the passage of boats is required, advising that any closures would simply be for specific sections (with temporary mooring buoys provided) for health and safety reasons, and would be for short timeframes (a matter of hours at a time, whilst, for instance, cables are strung over the river) [REP8-013]. R17 of the dDCO also includes a provision to ensure that the proposed 400kV line is not installed or maintained directly above the tidal river Stour at a height of less than 10 metres above the mean high water level of the river. This was also not considered to be contentious during the Examination. Other works

²¹⁴ EN-1, para 5.13.4

affecting the river Stour below MHWS are discussed in Chapter 10, in relation to the Deemed Marine Licence at Schedule 9 of the rDCO.

- 5.7.71 The Panel considers that suitable steps have been taken to address the issues raised during the Examination and that river navigation has been dealt with appropriately by the Applicant.

DECOMMISSIONING

- 5.7.72 While the decommissioning of the proposed development would probably be at least 80 years away it is likely that the processes involved would replicate in large measure those involved in the construction process, albeit traffic conditions and construction techniques will have altered in ways that are not apparent at present. [APP-029, paras 3.4.96 and 3.7.5]. Requirement 19 of the rDCO sets out the need for a Decommissioning Plan to be prepared before decommissioning of the 400kV line takes place.
- 5.7.73 On this basis the Panel concludes that no further consideration need be given to the decommissioning of the proposed development.

OVERALL CONCLUSION ON TRAFFIC AND TRANSPORTATION

- 5.7.74 Whilst the Panel was concerned that the transport assessment provided by the Applicant failed to use the methodology set out in EN-1 paragraph 13, we consider that the methodology used in the transport assessment was acceptable. In our view, the assessment of the effects on the road network of construction, maintenance and decommissioning of the proposed development has been appropriate. In our opinion, the rDCO would provide the local traffic and street authorities with sufficient information and powers to ensure that Temporary Traffic Orders and Stopping Up Orders are applied in an appropriate manner.
- 5.7.75 In terms of the proposed construction traffic management measures, we are satisfied that they would appropriately mitigate and manage any adverse environmental effects during construction of the proposed development caused by traffic and transport. We also consider that, with the CTMP in place, cumulative effects of traffic from the proposed development and other proposed developments would not be unacceptable.
- 5.7.76 In our view, the proposed diversion arrangements for the Saxon Shore Way and other PRowS would be satisfactory. We are also satisfied that the arrangements for the provision of a travel plan would be appropriate, as would arrangements for work affecting navigation on the River Stour. In terms of operation and decommissioning of the proposed development, we are satisfied that the proposed development raises no longer term issues.
- 5.7.77 The ExA does not consider traffic and transport matters are therefore a reason to prevent the making of the Order.

5.8 WATER QUALITY AND RESOURCES, AND FLOOD RISK

INTRODUCTION

- 5.8.1 This section addresses the effects of the proposed development on flood risk²¹⁵ and water quality and resources²¹⁶. Chapter 13 of the Environmental Statement (ES) assesses these issues and is updated by an Addendum to the ES submitted at Deadline (DL) 6 [APP-030 and REP6-018]. The matters considered here are in the context of the guidance in EN-1 and EN-5 and references to the relevant sections of these documents are given in footnotes.
- 5.8.2 Issues to do with the water environment are captured in separate Statements of Common Ground (SoCGs) between the Applicant and the EA [REP8-013]; River Stour (Kent) Internal Drainage Board (IDB) [REP5-008], the Marine Management Organisation (MMO) [REP7-012] and in so far as they relate to Kent County Council (KCC) as the lead local flood authority (LLFA), in the SoCG between the Applicant and the Councils [REP8-014].

FLOOD RISK

- 5.8.3 A SoCG was agreed early on in the Examination between the Applicant and the Environment Agency (EA) [REP2-020]. It was updated at DL3 [REP3-009] and finally updated (following the issue of the ES addendum) at DL8 [REP8-013].
- 5.8.4 From this, matters that are agreed include those that relate to the EIA approach and method and the Flood Risk Assessment (FRA), which the EA considers complies with EN-1, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) and that it represents an accurate assessment of the flood risks on site and that the assessment is proportionate to the risk and appropriate to the scale and nature of the project²¹⁷ [REP2-020].
- 5.8.5 The EA agrees that the operational elements of the proposed development would have a negligible impact on flood risk. Furthermore, that the Sequential and Exception Tests have been considered and the management measures which are summarised in section 9.1.7 of the FRA, should ensure that flood risk would not be increased elsewhere²¹⁸. In relation to the Sequential Test, the EA advises that this is ultimately a task for the decision-maker, assisted through the supply of information by the Applicant. Whilst the EA does not scrutinise the Test itself, it has confirmed that the Route Corridor Study undertaken by the Applicant, provides sufficient evidence to support both FRA and the application of the Sequential Test.

²¹⁵ EN-1, para 5.7.1 et seq

²¹⁶ EN-1, para 5.15.1 et seq

²¹⁷ EN-1, para 5.7.9 and 5.15.3

²¹⁸ EN-1, para 5.7.13 and 5.7.14 et seq

- 5.8.6 The EA is also satisfied with the embedded environmental measures set out in the ES and FRA²¹⁹. In its SoCG, the IDB confirms it has no concerns to raise with regards to the findings of the FRA and ES [REP5-008]. In response to first written question Q1.11.2, KCC also confirmed that the FRA *"adequately and appropriately covers the issues of concern to Kent County Council as Lead Local Flood Authority"* [REP2-069].
- 5.8.7 The FRA identifies areas where increasing the height of the ground level could result in loss of floodplain storage. This would allow construction to be appropriately managed in these areas, without any net loss of floodplain storage, under the Construction Environmental Management Plan (CEMP) [APP-111]²²⁰. The EA, KCC and the IDB are content that the rDCO and the CEMP adequately secure all measures required to mitigate flood risk [REP2-060, Q1.11.9, REP2-069, Q1.11.10 and REP5-008].
- 5.8.8 Concerns have been raised in relation to increased flood risk in the area of the Nethergong Campsite [REP4-030]. The FRA identifies the campsite as one of the sensitive areas where increasing the height of the ground level could result in a loss of flood plain storage and result in increased flood water levels [APP-111]. Without mitigation, the FRA estimates that the 1 in 100 year flood water level increase in this area would be 40mm during the construction phase. With mitigation however, the FRA concludes that flood water level changes in this area would be negligible. The EA is satisfied that there is no necessity to consider flood risk from the overhead lines and pylons themselves during operation [REP3-022]. We are therefore satisfied that, with the construction management described above, there would be negligible change to flood risk in this area.
- 5.8.9 From matters identified in the FRA, we are of the view that preference has been given where possible to locating the proposed development in Flood Zone 1²²¹. This is particularly relevant in terms of the two construction compounds which would be located in Flood Zone 1. Where this has not been possible, and the proposed development is located in Flood Zone 2, we are satisfied that there is no reasonably available site in Flood Zone 1. There are areas where it is not possible for the proposed development to be located outside of Flood Zone 3. In these areas, we consider that the sustainability benefits to the community, including need, outweigh the flood risk²²². The flood risk in the area around the proposed development would not increase as a result of the proposed development [APP-111], and the FRA has demonstrated that the proposed development would be safe. We are also satisfied there are no reasonable alternative sites on developable previously developed land. In view of the positions of the EA, KCC and

²¹⁹ EN-1, para 5.7.18 et seq

²²⁰ EN-1, para 5.7.24

²²¹ EN-1, para 5.7.13

²²² EN-1, para 5.7.16

the IDB on flood risk, we are of the opinion that the proposed development is in line with relevant flood risk management strategies and that sustainable drainage systems would be used where possible.

5.8.10 We are therefore satisfied that:

- the application is supported by an appropriate FRA;
- the Sequential and Exception Tests have been applied and passed; and
- the proposal is in line with relevant flood risk management strategies and would use sustainable drainage where appropriate; and
- in flood risk areas the project is appropriately flood resilient and resistant

5.8.11 In view of the overhead nature of the proposed development, we consider that it could remain operational when floods occur. We are also satisfied the FRA demonstrates that the proposed development would be sufficiently resilient to the effects of climate change [APP-111 and REP4-014, Q2.12.21]. We are of the view that the FRA identifies appropriate evacuation procedures under the preparation of Emergency Response Plans for Flood Events. We are therefore satisfied that the Applicant has taken into account climate change adaption²²³.

5.8.12 The ExA has no reason to disagree with the conclusions of the EA in respect of flood risk. This, together with the confirmation that both the IDB and KCC are content with the FRA leads the ExA to conclude that flood risk is not a matter that would prevent the grant of development consent.

5.8.13 As a result of all of the above points, we consider that the proposed development, with the flood risk management measures described above in place, would not be subject to an unacceptable level of flood risk, nor would it increase flood risk elsewhere. Furthermore, it would not result in a net loss of functional floodplain storage or impede water flows. We also consider that the proposed development would accord with EN-1 and EN-5 in this regard and that the Sequential and Exception Tests have been passed.

WATER QUALITY AND RESOURCES

Environment Agency

5.8.14 The ES confirms that the EA has produced a number of plans and strategies of relevance to the location within which the proposed development is situated. These include the South East River Basin Management Plan (RBMP); the River Stour Catchment Flood Management Plan; the Water Level Management Plan for Stodmarsh

²²³ EN-1, para 5.7.2

and Sandwich Bay to Hacklinge Marshes (SSSI) and the Stour Abstraction Licensing Strategy [APP-030, Chapter 13]²²⁴.

- 5.8.15 In its Relevant Representation (RR), the EA refers to its role as the key regulatory authority for implementing and delivering the requirements of the Water Framework Directive (WFD). The EA explains that the purpose of the WFD is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. The EA refers to EN-1 and the need for the Secretary of State to be satisfied that the proposal has had regard to the RBMP and meets the requirements of the WFD.
- 5.8.16 The EA confirms that in its view, the Applicant has undertaken an initial assessment of the effects of the scheme on surface watercourses within and around the Order limits [APP-030, Sections 13.7 and 13.8]. Once detailed design and confirmed locations of the temporary and permanent bridges and culverts are known, the EA advises that the Applicant would need to undertake a full WFD assessment to ensure, as a minimum, that planned activities would not:
- Cause deterioration of the status (or potential) of each quality element.
 - Prevent the ability for the achievement of environmental objectives set out in the RBMP.
- 5.8.17 The Applicant has also provided an updated baseline to its WFD data submitted with the application to incorporate new data published for Cycle 2 of the WFD assessments of the South East River Basin District [REP4-014, Q2.11.2 and REP6-018].
- 5.8.18 The EA confirms in its final SoCG with the Applicant that an overall WFD compliance assessment is not required for the proposed development as a whole at the application stage [REP8-013].
- 5.8.19 The EA also confirms in its final SoCG, that subject to satisfactory WFD assessments to accompany Flood Risk Activity Permits, WFD status would not be affected nor is the future achievement of WFD objectives compromised as a result of the proposed development [REP8-013].
- 5.8.20 By the close of the Examination, there was one matter that was outstanding in the final signed SoCG with the EA, namely the cumulative effect of the proposed development and the Broad Oak reservoir proposal on the WFD status of the Sarre Penn. The interaction between the proposed development and the reservoir proposal is discussed in detail in Chapter 6.
- 5.8.21 The ExA has no reason to disagree with the findings of the EA in relation to the WFD and as such, this is not a reason that would

²²⁴ EN-1, para 5.15.6

prevent the making of the Order²²⁵. Our conclusions in relation to the EA's specific concerns about the potential cumulative effects of the proposed development and the Broad Oak reservoir proposal on WFD status of the Sarre Penn are provided in Chapter 6.

5.8.22 We are therefore satisfied that the Applicant has undertaken sufficient assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment at this stage of the project²²⁶. We are also of the opinion that the Applicant has had appropriate regard to RBMPs and the WFD and its daughter documents²²⁷ and that appropriate provisions are within the rDCO to mitigate adverse effects on the water environment²²⁸.

The River Stour (Kent) Internal Drainage Board

5.8.23 The IDB is responsible for managing drainage of the arable land within the Chislet and Minster Marshes and the Ash Level and as such, their Statement on Flood Protection and Water Level Management is of relevance, as are a number of their byelaws that relate to management of the drainage network.

5.8.24 Its SoCG with the Applicant confirms that the IDB's interests are focussed mainly on the construction phase and works in the vicinity of watercourses within the IDB District, such as temporary watercourse crossings to enable construction vehicles to reach the pylon construction locations [REP5-008 para 1.3.2]. As set out in the SoCG, proposed construction works include:

- five new crossings over IDB maintained watercourses (2 x temporary clear span bridges over Eastern Monkton Stream and 3 x temporary clear span bridges over Western Monkton Stream);
- 39 new crossings over privately maintained ordinary watercourses within the IDB District (18 x clear span bridges and 21 x culverts);
- 51 additional locations in which construction works are anticipated within the banktops of ordinary watercourses within the IDB District (comprising outfalls for new/replacement land drains);
- a further 31 locations where it is hoped that existing bridges and culverts can be used, but which might require consenting if the existing crossings are found to be unsuitable following structural survey; and

²²⁵ EN-1, para 5.15.5

²²⁶ EN-1, para 5.15.2

²²⁷ EN-1, para 5.15.6

²²⁸ EN-1, para 5.15.7

- potential for additional locations in which construction works are proposed within the 8m byelaw distance of IDB maintained watercourses, but where possible these will be avoided.

- 5.8.25 In terms of temporary watercourses, Requirement 15 of the rDCO provides for an inspection regime to be approved by the RPA in consultation with the EA and the IDB. Requirement 16 of the rDCO seeks to regulate the removal of temporary bridges or culverts within 12 months, or longer if agreed by the same authorities as in Requirement 15, and these authorities were content with both requirements. The IDB's SoCG confirms that one matter is not agreed, relating to the disapplication of byelaws [REP5-008]. Table 4.1 of the SoCG sets out in detail the concerns of the IDB and the Applicant's response.
- 5.8.26 At DL7, the IDB stated that in its view three of its byelaws should not be dis-applied, contrary to the details set out by the Applicant in Schedule 15 of the dDCO [REP7-048]. The Applicant's response is set out at DL8 [REP8-019]. We have considered this matter in Chapter 10 of this report when we address Schedule 15 of the rDCO.
- 5.8.27 Aside from the IDB's concerns relating to the disapplication of byelaws, we note that they are content with the Applicant's consideration and conclusions in respect of water quality and resources. We do not disagree with the IDB and as such, do not consider water quality and resources as a factor that would prevent the making of the Order.

Kent County Council

- 5.8.28 We asked whether KCC was satisfied that Requirement 5 in the dDCO [REP2-003] and the CEMP [APP-064] adequately secured all measures required to mitigate flood risk in terms of its statutory responsibilities as LLFA [APP-111, para 7.1.2] [PD-009, Q2.11.3].
- 5.8.29 KCC confirmed that they had been consulted by the Applicant and that provided construction was outside of the stream channel, consent would not be required [REP4-026].
- 5.8.30 KCC also requested that their role as LLFA and consenting authority for ordinary watercourses was included and correctly referenced in the Order. KCC proposed a number of amendments in relation to Article 16; Requirements 6 and 14 and Schedule 4 of the dDCO. With these amendments in place, KCC confirmed that in its view, compliance with Requirement 5 and 6 in particular, would deliver the necessary mitigations for flood risk [REP4-026].
- 5.8.31 We discuss in Chapter 10 the steps taken by the Applicant to respond to KCC's concerns and we conclude that as a result of these steps, KCC as LLFA is appropriately referenced in the Order. In our view therefore, we consider that the concerns of KCC as LLFA have been addressed. Given this, we do not consider water quality and resources as a factor that would prevent the making of the Order.

Marine Management Organisation

- 5.8.32 As set out in Chapter 3 of this report, the Panel must have regard to the Marine Policy Statement (MPS) and any applicable marine plans in considering any application which relates to the exercise of any function capable of affecting the whole or any part of the marine area. The MPS is relevant because the Order limits cross the tidal reach of the River Stour, however, a marine plan for the South East inshore area where the proposed development is located has yet to be prepared [APP-030].
- 5.8.33 The MPS states, at paragraph 3.3.1, that: "*A secure, sustainable and affordable supply of energy is of central importance to the economic and social well being of the UK.*" It continues that: "*Contributing to securing the UK's energy objectives while protecting the environment, will be a priority for marine planning.*"
- 5.8.34 The MMO is responsible for licensing activities that affect tidal waters up to MHWS. It confirms in its SoCG with the Applicant, that it has no in-principle objection to the proposed development. The SoCG does not specifically refer to the MPS. It does confirm however, that all project works which fall under the definition of works requiring a marine licence are to be included in the Deemed Marine Licence [REP7-012, ID4.1].
- 5.8.35 There is only one matter that remained outstanding in the MMO SoCG at the close of the Examination which relates to timescales for provision of the Method Statement under Deemed Marine Licence Condition 7, which we discuss in Chapter 10 [REP7-012]. Given that no objections have been raised by MMO in relation to the MPS, and we did not receive any other representations from IPs on this matter, we are content that the application is in conformity with the MPS.

Ground contamination to controlled waters

- 5.8.36 The EA initially raised concerns in relation to the risk to controlled waters from existing ground contamination. In response, the Applicant updated its Land Contamination Desk Study to address the points raised by the EA [REP2-005]. Following its subsequent review of the updated report, the EA confirmed that the report had in general been carried out in line with relevant guidance; that its conclusions confirmed that a preconstruction ground investigation would be completed before any shallow ground works commence and that if any contamination was identified at that point, an assessment on the risk it posed to controlled waters would be completed.
- 5.8.37 With these updates in place, the EA agreed that the updated Land Contamination Desk Study satisfactorily addressed the concerns raised in its RR. This agreement is captured in the signed SoCG with the Applicant [REP8-013]. Requirement 13 of the rDCO secures the preparation of a written scheme which must accord with the Land Contamination Desk Study. This is discussed in Chapter 10.

- 5.8.38 As a result of the above points, we consider that the proposed development would not present any unacceptable risk of ground contamination to controlled waters.

OVERALL CONCLUSION ON WATER QUALITY AND RESOURCES AND FLOOD RISK

- 5.8.39 From the above points, we are satisfied that the proposed development would not have an unacceptable impact on flood risk and water quality and resources.

5.9 HISTORIC ENVIRONMENT

INTRODUCTION AND POLICY CONTEXT

- 5.9.1 This section reports matters related to the historic environment as set out in the National Policy Statements (NPS). The historic environment was identified as a principal issue in our initial assessment [PD-004, Annex B]. Matters relating to ancient woodland have been reported in Section 5.5 of our report.

Organisation of this report section

- 5.9.2 This section is organised as follows:
- Policy context;
 - Factual information about relevant parts of the application;
 - Archaeology;
 - Designated heritage assets;
 - Historic landscape character; and
 - Overall historic environment conclusions.

National Policy Statements

- 5.9.3 The matters of importance to this Examination are covered in the policy guidance in EN-1 and EN-5. EN-1 states that the Applicant should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. Regarding archaeological interest, the Applicant should carry out appropriate desk-based assessment²²⁹.
- 5.9.4 EN-1 points to the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets and their settings. It notes that there should be a presumption in favour of the conservation of designated heritage assets. It says that the more significant the asset, the greater the presumption in favour of its conservation. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the

²²⁹ EN-1, para 5.8.8 to 5.8.9

heritage asset the greater the justification will be needed for any loss²³⁰.

- 5.9.5 Furthermore, EN-1 notes that when considering applications for development affecting the setting of a designated heritage asset, the decision-maker should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset²³¹.
- 5.9.6 EN-5 advises that the Holford Rules should form the basis to routing of new overhead lines²³². (The Holford Rules have been discussed in Section 5.2 of our report). Holford Rule 2 is relevant²³³. The accompanying note to Holford Rule 2 advises that, where possible, routes should be chosen which minimise effects on the settings of areas of architectural, historic and archaeological interest, as well as other assets.

THE APPLICATION

Environmental Statement

- 5.9.7 The Applicant's Environmental Statement (ES) devotes a chapter to the historic environment [APP-029, Chapter 8]. It covers construction, operation and maintenance, and future decommissioning stages of the proposed development. The chapter is supported by Figures [APP-046] and Appendices which cover an archaeological desk-based assessment, a gazetteer of heritage assets and summaries of change of setting and non-designated heritage asset appraisals [APP-082 to APP-085]. Some of the photomontages in the Applicant's visual assessment are provided to illustrate existing and predicted views of settings of heritage assets [APP-040 to APP-044].

The Embedded Environmental Measures Schedule

- 5.9.8 An Embedded Environmental Measures Schedule (EEMS) [REP7-016] forms part of the application. Its functions and links to the DCO have been explained in Section 5.2 of our report.

The Construction Environmental Management Plan

- 5.9.9 The Construction Environmental Management Plan (CEMP), which is secured by Requirement 5 (R5) of the draft Development Consent Order (dDCO), includes a section devoted to the historic environment. This sets out construction stage mitigation and secures the appointment of an appropriately qualified Archaeological Clerk of

²³⁰ EN-1, para 5.8.13 to 5.8.15

²³¹ EN-1, para 5.8.18

²³² EN-5, para 2.8.7

²³³ Holford Rule 2: "Avoid smaller areas of amenity value, or scientific interests by deviation; provided this can be done without using too many angle towers, ie the more massive structures which are used when lines change direction"

Works (CoW) who would be responsible for ensuring the works are carried out in accordance with that set out in the mitigation and with relevant guidance including that from Historic England [REP7-018, Section 4.6]. One of the plans included in the CEMP is the Archaeological Mitigation Written Scheme of Investigation (WSI) at R5(2)(c). The CEMP also defines further works which would be undertaken under R12 (Reinstatement schemes) of the dDCO in relation to areas of buried archaeology and/ or archaeological earthworks [REP7-018, para 4.6.10].

REPRESENTATIONS BY OTHERS

The Councils

- 5.9.10 There are no outstanding matters relating to the historic environment in the final SoCG between the Applicant and the Councils [REP8-014, ID5.3].

Historic England

- 5.9.11 Historic England states it has no objection to the principle of the proposed development in the SoCG between the Applicant and Historic England. It states it has worked with the Applicant through consultation during an iterative design process to ensure inclusion of a number of provisions it requested are in the application [REP2-025, para 3.1.2 to 3.1.3].
- 5.9.12 Also in the SoCG, Historic England agrees that with regards the alternatives considered by the Applicant and the Route Corridor Study (RCS) [APP-131]; the route corridor identified by the RCS was the most appropriate in its consideration of the potential effects of the proposed development on the historic environment. Also that the route alignment identified in the Connection Options Report (COR) [APP-133] is appropriate in its consideration of the potential effects of the proposed development on the historic environment. It is also satisfied with the outcome of the appraisal of pylon design options, which we have discussed in Sections 5.2 and 5.3 of our report. Historic England is satisfied that assessment of effects on heritage assets is appropriate and follows appropriate guidance issued by Historic England [REP2-025, para 3.2.1].

ARCHAEOLOGY

The Applicant's position

- 5.9.13 The Applicant's assessment does not give rise to any significant effects in terms of disturbance to archaeological remains and archaeological heritage assets [APP-029, Table 8.9]. The proposed embedded environmental measures which the Applicant incorporated include the proposed route alignment giving consideration to avoidance of areas of greater archaeological potential, use of existing access tracks where possible and use of trackway for accesses; and mitigation of harm to or loss of archaeological interest by archaeological investigation using

an appropriate Written Scheme of Investigation (WSI) which would be agreed with Kent County Council's (KCC) Historic Environment team [APP-029, Table 8.5].

The Written Scheme of Investigation

- 5.9.14 The Joint Councils' Local Impact Report (LIR) states that KCC and Canterbury City Council's (CCC) archaeologists have been involved in the development of an outline WSI and the approach to mitigating the archaeology effects. During the Examination, the Archaeological Mitigation WSI was updated and submitted at Deadline (DL) 2. This version was agreed between the Applicant, CCC and KCC [REP8-014, ID4.5.12].

Historic England

- 5.9.15 Historic England states it is willing to defer to the advice provided by the KCC Historic Environment Team in respect of direct effects on non-designated archaeological heritage assets [REP2-025, para 3.2.1].

Kent County Council

- 5.9.16 KCC made the case for a schedule to be added to the s106 agreement²³⁴ for the Historic Environment to include a Wantsum Sea Channel Scheme and an Interpretation Board Scheme. The Applicant agreed in principle with the policy case and for a programme of heritage outreach. It amended the s106 Schedule to ensure it was consistent with the proposals set out in the agreed Archaeological Mitigation WSI [REP8-014, ID4.32.2].

Section 106 agreement

- 5.9.17 An engrossed copy of the s106 agreement between the Applicant and the Councils was submitted at Deadline (DL) 9. It contains Schedule 6, titled Historic Environment. This provides for:
- a heritage outreach scheme for public outreach to share the findings of the archaeological investigations, where appropriate. The heritage outreach scheme would be submitted to KCC for approval; and the Applicant covenants to use reasonable endeavours to implement the proposals contained in the approved scheme; and
 - an interpretation board scheme for the Wantsum Sea Channel through which the Applicant would use reasonable endeavours to deliver a scheme, approved by KCC, of up to four interpretation boards covering the findings of the archaeological investigations for the Wantsum Sea Channel; and
 - the costs incurred by KCC in considering any such submissions to be reimbursed by the Applicant [REP9-001, Appendix 2].

²³⁴ s106 of the Town and County Planning Act 1990 (as amended)

Panel's reasoning and conclusions on archaeology

- 5.9.18 Once the WSI had been agreed, no further matters were raised with regards archaeology. The ExA notes Historic England's view that the Applicant's strategic routeing and route alignment are appropriate in terms of potential adverse effects of the proposed development on the historic environment. We are content that the Applicant's embedded mitigation measures, which comprised routeing are sound in terms of its consideration of potential adverse effects on archaeology.
- 5.9.19 We are also satisfied with the other measures included in the CEMP which are also set out in the WSI. We agree with the way the CEMP links to R12 of the dDCO in addressing reinstatement of areas of buried archaeology and archaeological earthworks.
- 5.9.20 We welcome the outreach and interpretation board provisions in the s106 agreement. The ExA considers that these proposals would better reveal the significance of the assets²³⁵. We also note the Applicant's agreement with the policy case. We give weight to the historic environment element of the s106 agreement. We consider it to be relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other aspects²³⁶. We consider it in the context of enhancement not mitigation.

DESIGNATED HERITAGE ASSETS

Canterbury World Heritage Site

- 5.9.21 The Applicant finds that the visibility of the proposed pylons on the setting of the Canterbury World Heritage Site (WHS) would be minimal and would not affect the significance of the asset, so the effect is not significant. The ES assessment also covers other receptors of high significance namely the Grade 1 listed Christ Church Cathedral and Dane John Gardens registered park and garden (Grade II), also found to be not significant [APP-029, para 8.10.2 to 8.10.20 and Table 8.9].
- 5.9.22 It is noted in the Joint Councils' LIR that KCC and CCC consider that the provision of new pylons would not have a significant impact on the WHS [REP2-061].
- 5.9.23 Historic England agrees in its SoCG with the Applicant that there would be negligible change in the settings of Canterbury WHS and Dane John Gardens and the settings of other designated heritage assets within the WHS [REP2-025, ID3.1.1 and 3.1.2]. The Panel visited the viewpoint in Dane John Gardens unaccompanied [EV-002(D)].

²³⁵ EN-1, para 5.8.18

²³⁶ EN-1, para 4.1.8

Listed buildings and conservation areas

- 5.9.24 Historic England states it is willing to defer to the advice provided by the Local Authority Conservation Officers in respect of indirect effects on Grade II listed buildings and conservation areas [REP2-025, para 3.2.1]. In its SoCG, Historic England agrees with the Applicant's findings of the level of harm and significance of the effects of the proposed development on listed buildings and conservation areas.
- 5.9.25 We report only on the one heritage asset (Tile Lodge Farmhouse) where less than substantial harm, but nevertheless a significant adverse effect is predicted; and on listed buildings over which there is a difference of opinion regarding the scoping out.
- 5.9.26 Harm to the significance of other designated heritage assets, which is predicted to be less than substantial and to a minor degree is identified in the ES for the following: Sturry conservation area, Tile Lodge conservation area and Oasthouse at Tile Lodge Farm, Chislet conservation area, Sarre Mill, Sarre Anglo-Saxon cemetery, Monkton Court and Parsonage Oasts at Monkton [APP-029, para 8.12.2].

Tile Lodge Farmhouse

- 5.9.27 The Applicant's assessment finds the effect of the proposed development on one listed building, Tile Lodge Farmhouse (which is situated in a group of heritage assets including the Oasthouses and Granary and non-designated buildings, off Hoath Road) would give rise to a degree of harm and adverse effect which is significant [APP-029, para 8.10.40 to 8.10.62]. We requested a photomontage to represent a view towards the proposed Pylon PC16 from the vicinity of the farmhouse. This was provided [REP2-046, VP39].
- 5.9.28 Historic England and CCC agree in SoCGs with the Applicant that there would be a discernible adverse change of medium magnitude to the setting of Tile Lodge Farmhouse. They note that alternative design options and layouts for pylons PC14 to PC18 had been considered to identify the least intrusive layout and design. It is agreed in the SoCGs that mitigation planting to strengthen the hedgerow to the south of Tile Lodge Farmhouse would reduce the magnitude of change, but the effect would remain significant. Harm, which would be less than substantial, would be caused to the significance of the asset [REP2-025, ID3.3.2 and REP8-014, ID4.5.5].
- 5.9.29 We also note that in this location, there is a restriction on the movement northwards within the limits of deviation (LoD) at this location. It has been included to constrain movement closer to Tile Lodge Farmhouse. The Applicant explained in response to first written questions (FWQ) that the effect of movement within the LoD has been assessed thereby representing the worst case scenario and therefore further restriction would not amount to any greater magnitude of change. The Applicant confirmed that an iterative design process for

the siting of Pylon PC16 has been subject to detailed consideration [REP2-016, Q1.6.10].

- 5.9.30 We noted in Section 5.2 of our report, the landowner in this location had submitted comments on the Applicant's proposed mitigation planting. The Applicant has confirmed it would seek to take on board landowner comments whilst still ensuring the mitigation to be delivered would be satisfactorily achieved. We explored how this would happen at the Landscape, Visual and Biodiversity Effects, including Alternatives ISH (the Landscape ISH) [EV-054]. This has been discussed in Section 5.2 of our report.

Broad Oak village

- 5.9.31 The Applicant scoped the listed buildings in Broad Oak village out of the ES. The Applicant explained that it considered potential effects on the listed buildings within Broad Oak in the Preliminary Environmental Information Report (PEIR) and the intention to scope these buildings out of the ES was agreed with the prescribed consultees [APP-029, para 8.7.30 to 8.7.32 and REP3-015, Q1.6.7].
- 5.9.32 Historic England agrees that no harm would arise to the settings of listed buildings, other than those identified in the SoCG, within 5km of the proposed overhead route centreline [REP2-025, ID3.12.1]. This would appear to support the Applicant's decision to scope out the listed buildings in Broad Oak village from the assessment.
- 5.9.33 Broad Oak Preservation Society²³⁷ (BOPS) disagrees with the Applicant's scoping out of the listed buildings in the vicinity of Broad Oak village. BOPS sets out its arguments for a number of listed buildings in the village [REP2-077, Q1.6.7].
- 5.9.34 The Applicant responded specifically on the buildings mentioned by BOPS. It also considers that BOPS' characterisation of the visibility of the proposed development in views from these buildings appears to overstate the likely visibility of the proposed overhead line, because it does not consider intervening planting and buildings. The Applicant also explained that in adopting policy²³⁸ and guidance²³⁹, the assessment requires the effect on the heritage significance of these assets to be understood, rather than simply characterising the visibility of the proposed development. In this, it is different from visual assessment [REP3-015, Q1.6.7].
- 5.9.35 BOPS later raised the matter of a listed building, Summer Hill, on which it felt the proposed overhead line would have detrimental effect because pylons PC7 and PC8 would be visible from the rear of the property, which could be as close as 350m [AS-009]. The Panel

²³⁷ Broad Oak Preservation Society describes itself as "an unincorporated body whose membership extends to all residents of the village of Broad Oak". There is more detail in Section 5.2 of our report

²³⁸ EN-1, Section 5.8

²³⁹ Historic England 2015 GPA3: The Setting of Heritage Assets

viewed Summer Hill from Shalloak Road and from an adjacent footpath as part of an unaccompanied site inspection (USI) [EV-002(D)].

- 5.9.36 The Applicant provided a response indicating that Summer Hill had been assessed in detail with other listed buildings in Broad Oak at PEIR stage and was subsequently scoped out with the agreement of consultees. The Applicant provides its justification which says that any change to significance would be of negligible magnitude, no harm would arise and the effect would not be significant [REP5-016, Action 21].

Panel's reasoning and conclusions on designated heritage assets

- 5.9.37 The ExA is satisfied with the Applicant's assessment of the Canterbury WHS and agrees that the effect would not be significant. This is based on the responses received from CCC and Historic England, both of which agreed with the Applicant's assessment; and our USI to Dane John Gardens.
- 5.9.38 The ExA is satisfied that the Applicant's assessments of the Sturry conservation area, Tile Lodge conservation area, Chislet conservation area, Sarre Mill, Sarre Anglo-Saxon cemetery, Monkton Court and Parsonage Oasts at Monkton are sound. We agree that the harm identified would be less than substantial and of a minor degree.
- 5.9.39 The ExA is content with the Applicant's assessment and the mitigation proposed at Tile Lodge Farm. We note from the evidence presented that the scheme design has undergone an iterative process with regards the placement of Pylon PC16 in order to minimise visual intrusion in direct views of and from Tile Lodge Farmhouse and in passing and sequential views from Hoath Road. We are satisfied that in securing the roles of Arboricultural CoW and Land Officer/ Agent, the CEMP would ensure that appropriate consideration was taken of the landowners' points of view whilst safeguarding the mitigation function of the planting. This has been discussed in Section 5.2 and is also discussed in relation to the rDCO in Chapter 10.
- 5.9.40 The ExA is satisfied that the Applicant's scoping out of the listed buildings in Broad Oak is a suitable and proportionate approach. We acknowledge the points made by BOPS, but we agree with the Applicant's explanation of the assessment approach, which considers more than just views from the listed properties. This point also applies to the property, Summer Hill which was raised later by BOPS.

HISTORIC LANDSCAPE CHARACTER

- 5.9.41 The Applicant's assessment of the effect of the proposed development on historic landscape character was undertaken on the basis of the geographic Sections A to D. The Applicant predicted that significant historic landscape elements would be retained, but the proposed development may affect the legibility of the historic landscape [APP-

029, Section 8.11]. It found that change to the historic landscape character of the area in which the proposed development is located would be greatest during construction, and reduce discernibly once temporary construction accesses were removed; and effects would not be significant.

- 5.9.42 We asked about the inter-related effects referred to in the ES whereby the change to the historic environment has the potential to give rise to biodiversity effects. The Applicant explained this would be limited to effects on 'important' hedgerows and ancient woodland. We have discussed ancient woodland in Section 5.5 of this report. With regards 'important' hedgerows, the Applicant explained that change would be limited to the construction period, that hedgerows would regenerate fairly rapidly; and replacement planting would be used to strengthen these hedgerows [REP2-016, Q1.6.15].
- 5.9.43 The s106 agreement contains a Landscape and Habitat Enhancement Scheme (LHES) at Schedule 2. This has been described in Section 5.2 of our report. The Applicant stated in response to FWQ that although the LHES is not intended to offer mitigation of adverse effects on specific heritage assets, it is intended to offer more general enhancement by responding to and reinforcing historic landscape character [REP2-016, Q1.6.18].

Panel's reasoning and conclusions on historic landscape character

- 5.9.44 The ExA is satisfied that the Applicant's assessment of effects on historic landscape is sound and that replacement planting would be secured through R8, R9 and R10 of the rDCO. These require approval and implementation of a Tree and Hedgerow Protection Strategy and a planting scheme which are to be in accordance with the Biodiversity Mitigation Strategy and the Arboricultural Impact Assessment. These requirements are discussed in more detail in Section 5.2 and Chapter 10 of our report. We give some limited weight to the LHES in contributing the historic landscape character.

CONFORMITY WITH LOCAL POLICIES

- 5.9.45 As stated in Section 5.2 of our report, the SoCG between the Applicant and the Joint Councils [REP8-014, ID4.24.1] confirms agreement between the parties on the content of the chapter of the Planning Statement which covers local planning policy [APP-127, Chapter 7 and Appendix C]. The Panel is content that the proposed development is compliant with the local policies as set out in the Planning Statement for the historic environment.

DECOMMISSIONING

- 5.9.46 The Applicant predicts that future removal of the 400kV overhead line would result in reversal of the change to setting of heritage assets. In the case of historic landscape character, if woodland was restored it would result in reversal and if not would result in a lasting change, of

low magnitude and therefore not be significant [APP-029, Sections 8.8 to 8.11].

OVERALL CONCLUSIONS ON HISTORIC ENVIRONMENT

- 5.9.47 The ExA considers policy on the historic environment within EN-1 has been followed by the Applicant²⁴⁰. This policy is consistent with the aims of Section 12 of the NPPF, Conserving and enhancing the historic environment. In coming to our conclusions, we also agree that the Infrastructure Planning (Decisions) Regulations 2010 which require decision makers to have regard for the desirability of preserving the character and appearance of conservation areas have been met. We are content that the mitigation proposed regarding 'important' hedgerows would satisfy the Hedgerow Regulations 1997, which are described in Chapter 3.
- 5.9.48 We give weight to Historic England's opinion regarding the appropriateness of the Applicant's approach generally²⁴¹. Also to its opinion on the consideration of alternatives, route corridor identified and route alignment in terms of potential effects on the historic environment. The ExA considers this adds weight to conclusions we reached and reported earlier in our report (Chapter 4 and Section 5.2) regarding the suitability of the approaches the Applicant adopted in consideration of the Holford Rules (Rule 2) and generally in consideration of alternatives and the route corridor selection²⁴².
- 5.9.49 We are content with the level of archaeological assessment undertaken so far, together with that proposed through the agreed WSI²⁴³. The ExA places limited weight on the historic environment Schedule of the s106 agreement with respect to the outreach and interpretation which we consider would better reveal the significance of the assets²⁴⁴. We are also content with the findings of the assessment on historic landscape character.
- 5.9.50 The less than substantial harm, but significant adverse effect, which would occur to the significance of Tile Lodge Farmhouse, and the less than substantial harm that would occur to other designated heritage assets, represent adverse effects to be weighed in the overall balance against the benefits of the proposed development. However we find there are no historic environment reasons to prevent the Secretary of State from making the Order.

²⁴⁰ EN-1, para 5.8.8 to 5.8.10

²⁴¹ EN-1, para 5.8.8

²⁴² EN-5, para 2.8.7

²⁴³ EN-1, para 5.8.22

²⁴⁴ EN-1, para 5.8.18

5.10 AIR QUALITY AND LIGHTING

Introduction and policy context

- 5.10.1 Requirements for air quality are set out in EN-1 Section 4.10 'Pollution control and other environmental regulatory regimes'. It notes that pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment to the lowest practicable level and requires ambient air quality to meet standards that guard against impacts to the environment or human health²⁴⁵.
- 5.10.2 In EN-1 Section 5.6, under the heading of 'Dust, odour, artificial light, smoke, steam and insect infestation' it is noted that all these effects have the potential to result in a detrimental impact on amenity or cause a common law nuisance or a statutory nuisance under Part III, Environmental Protection Act 1990. This means that the planning process has no need to duplicate the safeguarding regimes already contained within these statutory processes. Steam and insect infestation were not considered to be relevant or important in the context of the proposed development.

The Applicant's assessment

Air quality, dust, odour and smoke

- 5.10.3 The ES [APP-029, Section 5, Table 5.1] notes that the effects on air quality of emissions from construction traffic, construction works, and operational traffic are scoped out of the EIA, as are cumulative air quality effects.
- 5.10.4 The Applicant's justification for scoping out traffic effects is that traffic volumes generated by the proposed development during both construction and operational phases would be below the levels at which the Environmental Protection UK and Institute of Air Quality Management recommend air quality assessments should be undertaken [APP-030, para 12.7.6]. Construction vehicle emissions are not considered further in the air quality assessment.
- 5.10.5 The Applicant explains that the thresholds that trigger a need for operational phase air quality assessments are not predicted to be met. Therefore the Applicant scopes out vehicle emission effects for the operational phase [APP-030, para 12.7.8].
- 5.10.6 The Applicant undertook a dust risk assessment [APP-110]. This concluded that without mitigation measures in place the risk of dust effects is medium at most. This risk assessment was used to define mitigation measures which would be implemented in order to minimise

²⁴⁵ EN-1, para 4.10.2

dust effects and ensure there would be no significant adverse air quality effects [APP-030, para 12.7.9].

- 5.10.7 Scoping out cumulative or inter-related effects is justified by the Applicant on the basis that the best practice measures that would be incorporated into the proposed development, as set out in the dust risk assessment, would ensure no significant air quality effects as a result of construction dust. The Applicant also argued that there would be no inter-related effects because the low numbers of construction vehicles would add little to the low concentrations of background emissions [APP-030, paras 12.7.10 and 12.7.11].
- 5.10.8 The Panel accepts the Applicant's arguments for scoping out air quality effects arising from construction and operation vehicle emissions because the predicted construction and operation vehicle numbers are shown not to exceed the thresholds set by the relevant guidance.
- 5.10.9 In their Relevant Representations (RR) Dover District Council (DDC) and Canterbury City Council (CCC) noted that mitigation measures to ensure that receptors were not impacted by dust emissions during construction or dismantling operations would need to be identified and implemented. It was asserted that the Construction Environmental Management Plan (CEMP) did not fully reflect the recommendations of the Dust Risk Assessment [RR-029 and RR-068].
- 5.10.10 Following further correspondence between the Applicant and the District Councils, including an explanation by the Applicant of how each of the matters covered in the Dust Risk Assessment would be secured in the CEMP, the matter was noted as agreed in the SoCG [REP8-014, ID 4.8.5].
- 5.10.11 There were no other RRs relating to air quality, dust, odour or smoke.

Lighting

- 5.10.12 Details of associated development relating to the proposed development are given at Schedule 1 of the draft Development Consent Order (dDCO). Item (j) details the establishment of site construction compounds, temporary offices, temporary vehicle parking and construction and security lighting.
- 5.10.13 In considering the effects on ecological receptors (as discussed in Section 5.5 of our report), the Applicant has considered the effects of an increase in artificial light levels during the construction phase which could result in disruption to the behaviour of fauna, including some European Protected Species.
- 5.10.14 The Applicant explained that during construction, lighting along the overhead line would be required only exceptionally, with the majority of activities being undertaken in daylight hours. Lighting at site compounds is anticipated and there may also be a need for lighting during limited night-time works where scaffolding is in place over roads and railways [APP-029, para 3.4.33]. It is stated that all sources

of artificial lighting would be removed from the Order limits at the end of construction.

The Applicant's proposed mitigation

Air quality, dust, odour and smoke

- 5.10.15 The Dust Risk Assessment contains a list of highly recommended or desirable environmental mitigation measures to be implemented during the construction and demolition processes of the proposed development [APP-110 Table 12.A.10]. These measures are repeated in practical terms within the air quality section of the CEMP [REP7-018, Section 4.8] and as such they are secured under Requirement 5 of the rDCO.
- 5.10.16 An Embedded Environmental Measures Schedule (EEMS) has been produced by the Applicant. This provides a summary of all the embedded environmental measures proposed by the Applicant and ties them to the relevant delivery mechanisms, dDCO requirement and discharging authority [REP7-016 Introductory Note]. The EEMS includes mitigation measures specifically related to air quality [REP7-016, IDs AQ-A to AQ-UU].
- 5.10.17 These measures are secured at Requirement 5 of the rDCO by their inclusion within the CEMP [REP7-018, para 4.8.2].
- 5.10.18 The CEMP ensures that items liable to emit fugitive odours would be covered [REP7-018, para 4.8.3]. The CEMP also specifically forbids the use of bonfires and the burning of waste materials on the site of the proposed development [REP7-018, para 4.8.2, bullet 17].
- 5.10.19 The Construction Traffic Management Plan (CTMP), included as part of the CEMP, also includes air quality mitigation measures in terms of the emission class of vehicles to be used in the proposed development, control of construction traffic movements, the keeping of vehicle records and the prescription of routes [REP8-011, Section 5].

Lighting

- 5.10.20 Requirement 6 of the dDCO specifies that before any stage of the authorised development may commence, a Lighting Scheme for that stage is to be submitted to and approved by the relevant planning authority, which must consult with Natural England. The CEMP, secured by Requirement 5 of the dDCO specifies the essential requirements of the Lighting Scheme to be produced by the Applicant [REP7-018, Section 3.6]. This covers factors related to minimising effects on ecological receptors. It has been referred to in Section 5.5 of our report.
- 5.10.21 The EEMS also sets out environmental measures in relation to lighting to avoid, reduce or compensate for potential effects of lighting on habitats and species.

OVERALL CONCLUSION ON AIR QUALITY

5.10.22 Having reviewed the relevant ES sections and the measures taken to ensure that appropriate mitigation measures are properly secured under the dDCO, and having regard to the views of the district councils as the regulatory bodies for these matters, the Panel concludes that the treatment of air quality and other related issues in the application is appropriate and that the mitigation measures secured under the dDCO are adequate. It further concludes that there are no issues relating to air quality, dust, odour, artificial light or smoke that would prevent the making of the Order.

5.11 OTHER MATTERS

CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

- 5.11.1 EN-1 identifies at Section 5.4 civil and military aviation and defence as a topic that should be considered in the assessment of any energy nationally significant infrastructure project (NSIP).
- 5.11.2 This topic was not identified as a principal issue. However, the proximity of the site to both the former Manston Airport, with its future use as an airport currently unclear, and the airfield at Maypole, with its 650m grass runway about 1km to the North of the proposed development, has required an examination of this topic in order to satisfy the NPS requirements.
- 5.11.3 No Relevant Representations relating to civil or military navigation and defence interests were received²⁴⁶. The Panel's first written questions (FWQ) to the Applicant dealt with various aspects of the potential impact of the proposed development on radar and air navigation [PD-006, Q1.12.1 to Q1.12.6]. The Applicant's responses to these indicate that the consultations with the Civil Aviation Authority (CAA) and the other bodies as required by EN-1 have been carried out satisfactorily²⁴⁷ [REP2-016, responses to Q1.12.1 to Q1.12.6].
- 5.11.4 The responses to the Applicant's consultations with the CAA indicate that the proposed development would not constitute aviation en-route obstructions for civil aviation purposes. The CAA noted that aerodrome safeguarding responsibilities lie with aerodrome operators rather than with themselves. On this basis the Applicant contacted the Maypole aerodrome authorities to discuss the project but no response was forthcoming. On the basis that the aerodrome is 1.2km from the proposed development and operates a circuit height of 800ft the Applicant concluded that it would suffer no significant direct or indirect effects from the proposed development [REP2-016, Q1.12.1].

²⁴⁶ EN-1, para 5.4

²⁴⁷ EN-1, para 5.4.11

- 5.11.5 It was noted that the nearest helicopter landing sites identified by the British Helicopter Association or by commercial interests were over a kilometre from the proposed development. The Applicant again concluded that there would be no significant direct or indirect effects on these as a result of the proposed development [REP2-016, Q1.12.2].
- 5.11.6 The Applicant received no response to correspondence both by letter and e-mail to the Ministry of Defence during the consultation process and the Applicant has assumed that there are no outstanding issues relating to military aviation [REP2-016, Q1.12.3].
- 5.11.7 CAA guidance did not identify a requirement to fit warning lights to pylons [REP2-016, Q1.12.5]. The Applicant has confirmed that the Defence Geographic Authority would be informed of the exact location and height of proposed pylons if the Order is granted [REP2-016, Q1.12.4].

Manston Airport

- 5.11.8 The possibility of the re-opening of the former Manston Airport for aviation was considered by the Applicant. On the basis that the CAA considered that overhead lines and associated structures at a maximum height of 46.5m would not constitute an aviation en-route obstruction for civil aviation purposes the Applicant considered that the proposed development would not compromise a future return of the airport site to this previous use [REP2-016, Q1.12.1].
- 5.11.9 The matter was a topic for discussion with the Councils who have agreed that the proposed development would have no impact on the potential future use of the former Manston Airport site [REP8-014, ID 4.29.1]. Through the on-going discussions with the local authorities, it was agreed that the Applicant would provide an update of its cumulative assessment, to consider new information. This included adding Manston Airport. This is because the re-opening of Manston Airport as a new air freight and cargo hub is being promoted as a NSIP, for which a scoping opinion has been submitted to PINS since the preparation of the Applicant's ES for the proposed development [REP6-018, para 4.1.6 to 4.1.7 and Table 4.2, Project L].
- 5.11.10 We are content that the Applicant's assessment and response to our FWQ adequately covered any potential future re-opening of Manston Airport for aviation purposes.
- 5.11.11 On the basis of the evidence given during the Examination the ExA is satisfied that the Applicant has considered the effects on civil and military aerodromes, aviation technical sites and other defence assets²⁴⁸. The ExA is satisfied that the Applicant has undertaken the necessary consultation regarding lighting of tall structures and would

²⁴⁸ EN-1, para 5.4.14

continue that consultation if the Order is granted²⁴⁹. The Panel concludes that civil and military aviation and defence interests would not present a reason for refusing consent for the proposed development.

COASTAL CHANGE

- 5.11.12 EN-1 identifies at Section 5.5 coastal change as a topic that should be considered in the assessment of any energy NSIP.
- 5.11.13 EN-1 notes that in this context coastal change means physical change to the shoreline involving erosion, coastal landslip permanent inundation or coastal accretion²⁵⁰. The proposed development does not at any point lie adjacent to the coast line and so could not be the cause of any of the defined effects.
- 5.11.14 In terms of landscape and visual impacts consultation between the Applicant and landscape stakeholders concluded that potential significant adverse effects could be scoped out of the ES [APP-029, para 6.7.29 and para 7.7.34].
- 5.11.15 The Panel concludes that the proposed development would have no effect on coastal change and this issue would not present a reason for refusing the Application.

LAND USE INCLUDING OPEN SPACE, GREEN INFRASTRUCTURE AND GREEN BELT

- 5.11.16 EN-1 identifies land use, including open space, green infrastructure and Green Belt, as a topic that should be considered in the assessment of any nationally significant energy infrastructure project²⁵¹.

Green infrastructure and green belt

- 5.11.17 Green infrastructure networks and green wedges are mentioned in a recital of local authority landscape, visual and biodiversity policies [APP-029, Table 6.1 and Table 9.1]. No RRs were received on these matters and no issues were raised by IPs. . They do not appear in the list of outstanding matters contained in the final SoCG between the Applicant and the Joint Councils [REP8-014, Section5]. The Applicant offers biodiversity and landscape enhancement through a Landscape and Habitat Enhancement Scheme, which would contribute to green infrastructure networks. This is discussed in Sections 5.2 and 5.4 of our report.
- 5.11.18 In its Planning Statement the Applicant notes that "*There are no Green Belt policies allocated within the vicinity of the proposed*

²⁴⁹ EN-1, para 5.4.16

²⁵⁰ EN-1, para 5.5.2

²⁵¹ EN-1, Section 5.10

development. Accordingly, the Green Belt policy requirements of EN-1 are not considered any further in this Planning Statement." [APP-127, para 6.3.89]. We have no reasons to disagree.

Land-use

- 5.11.19 In our report land use has been considered generally in the context of the socio-economic impacts of the proposed development and these have been reviewed and reported in Section 5.4 above. The elements relating to land use considered are:
- tourism;
 - public rights of way;
 - community infrastructure; and
 - farming.
- 5.11.20 The Applicant explains that the main impacts on land use would be short term, relating to the construction and dismantling phases of the proposed development. The total area of agricultural land that would be required for the construction of the proposed 400kV overhead line and the dismantling of the existing overhead line is calculated at approximately 116 hectares. While areas used both for the construction and dismantling would be out of agricultural use for over four years, areas used only for construction or for dismantling would be unavailable for agricultural use for a shorter period, typically of months, so that some areas would be affected for a period of less than one growing season [APP-030, para 14.17.2].
- 5.11.21 The Applicant scoped out consideration of permanent loss of best and most versatile (BMV) agricultural land. This is justified because the loss of BMV associated with the proposed 400kV route would be 1.08 hectares, but the overall amount of this land that would be lost to the scheme reduces to 0.56 hectares when land released from dismantling of the PX 132kV line is taken into account [APP-030, para 14.8.11, bullet 8]. The ExA is satisfied that the Applicant has justified its scoping out of the loss of BMV in its assessment²⁵².
- 5.11.22 The Applicant sets out an assessment of effects on future land uses in the ES. This assessment finds there would be no significant effects identified. Matters related to South East Water's Broad Oak reservoir proposal are discussed in Chapter 6. Apart from the reservoir proposal, which we report upon later, the ExA is satisfied that the Applicant has assessed future land uses.
- 5.11.23 Issues relating to the socio-economic aspects of land use have been fully discussed in Section 5.4 of our report. No additional matters have been identified here which in the Panel's view would prevent the making of the Order.

²⁵² EN-1, para 5.10.15

WASTE MANAGEMENT

- 5.11.24 EN-1 identifies at Section 5.14 waste management as a topic that should be considered in the assessment of any energy NSIP.
- 5.11.25 EN-1 requires the Applicant to set out the steps proposed for the management of waste generated by the proposed development and to produce a Site Waste Management Plan (SWMP)²⁵³. This should address the minimising of volume of waste, waste recovery and disposal, and the impact of waste generated by the proposed development on waste management facilities in the area.
- 5.11.26 Given that the proposed development would not generate any waste material when in operation then the SWMP would relate only to the construction and dismantling phases of the project.
- 5.11.27 The Construction Environmental Management Plan (CEMP) contains a high level description of the measures to be employed in the management of waste produced during the construction and demolition process [REP7-018, Section 3.7]. This is secured by Requirement 5 of the rDCO as is the Outline Waste Management Plan (OWMP) which is also part of the CEMP and provides fuller details of the measures to be used [REP7-022].
- 5.11.28 The detailed SWMP would be prepared by the Applicant's contractor once appointed. This would be secured by Requirement 6 of the rDCO, based on the OWMP, and be subject to the approval of the relevant planning authority after consultation, as appropriate, with the relevant agencies listed in the Requirement [REP7-018, para 3.7.2].
- 5.11.29 The OWMP provides an overview of the standard waste management measures that would be implemented during the construction works. It presents an estimate of the likely quantities and types of waste that are anticipated to arise from the proposed development [APP-029, para 3.8.6]. It also mirrors the waste hierarchy set out in EN-1²⁵⁴ and illustrates the practical steps that would be taken to ensure that prevention, re-use, re-cycle and recovery methods result in minimised disposal of waste material [REP7-022, Section 6].
- 5.11.30 Waste management has not been the subject of any RRs and no mention has been made of the matter by the local authorities during the Examination.
- 5.11.31 The Panel concludes that the provisions made for the treatment of waste materials that would be generated by the proposed

²⁵³ EN-1, para 5.14.6

²⁵⁴ EN-1, para 5.14.2

development are appropriate measures would be applied through the CEMP²⁵⁵.

LAND CONTAMINATION AND GROUND GASES

- 5.11.32 EN-1 notes that the decision-maker should assume that relevant environmental pollution control and regulatory regimes will be properly applied and enforced²⁵⁶. It also notes that the decision-maker satisfy itself that the relevant pollution control authority is, in turn, satisfied that potential releases can be adequately regulated under the pollution control framework and that any cumulative effects remain within statutory environmental quality limits.²⁵⁷
- 5.11.33 In its RR the Environment Agency raised the issue of land contamination and asserted that the Land Contamination Desk Study [APP-113] did not address the risk to ground or surface water from historical land contamination. [RR-022, Section 6].
- 5.11.34 The Applicant submitted to the Examination an updated Land Contamination Desk Study which included a Controlled Waters Contamination Assessment [REP2-005, Annex 14A.2]. In its SoCG the EA agreed that the updated study satisfactorily addressed the concerns raised in its RR [REP8-013, ID3.6.1].
- 5.11.35 In addition the Land Contamination Desk Study identified a number of possible sources of ground gas which could be impacted by the proposed development [REP2-005, para 6.5.1]. It also identified the potential for ground gas affecting any temporary buildings built at the proposed Westbere construction compound.
- 5.11.36 The CEMP contains details of how land affected by contamination is to be treated [REP7-018, para 4.4.5]. This requires that the desk study findings would be used to determine the nature of the specific ground investigations required and that quantitative risk assessments be made if significant risk of ground gas is identified. In these cases it requires that detailed mitigation measures are implemented, checked and verified.
- 5.11.37 Dover District Council (DDC) is in agreement with the conclusions as contained in the Land Contamination Desk Study [REP8-014, ID4.9.10].
- 5.11.38 Given the provisions of the CEMP and the commitment to further ground investigations contained within it, the Panel is satisfied that potential releases from land contamination and ground gases can be adequately regulated under the pollution control framework, thus safeguarding the general public from any associated hazards. No

²⁵⁵ EN-1, para 5.14.8

²⁵⁶ EN-1, para 4.10.3

²⁵⁷ EN-1, para 4.10.7

matters relating to land contamination and ground gases have been identified which in the Panel's view would prevent the making of the Order.

CUMULATIVE IMPACTS

- 5.11.39 EN-1 requires that the ES should include an assessment of the likely significant effects of, among other things, cumulative effects at all stages of the project. It also requires that the ES should provide information on how the effects of the Applicant's proposal would combine with the effects of other developments. It requires consideration of how the accumulation of effects and the interrelationship between them might affect the environment, economy, or the community as a whole²⁵⁸.
- 5.11.40 The Applicant's ES provides an explanation of how inter-project cumulative and inter-related effects are assessed [APP-029, Section 5.8]. The Applicant submitted an addendum to the ES providing an updated cumulative effects assessment (CEA) at DL6, with another addendum at DL7 [REP6-018, Section 4.1 and REP7-027].
- 5.11.41 The Applicant's cumulative assessment identifies significant adverse effects in the topic areas of landscape, visual, traffic and noise [REP6-018, Table 4.4]. The CEA sets out on a topic basis, for each development considered, where the significance of effect is greater when the proposed development is considered cumulatively.
- 5.11.42 The CEA considers combined landscape effects from a number of development projects on a number of landscape character areas (LCA). It finds that the effects do not reach a tipping point that would trigger a greater significance of adverse effect than moderate. None of the cumulative visual effects are predicted to be greater than moderate adverse. Traffic cumulative effects could be moderate to major adverse, but this is predicted to be unlikely as it would only occur if two other major developments took place at the same time as the proposed development. This is covered in more detail in Section 5.7. Cumulative moderate adverse noise effects could arise, but it is stated that the cumulative noise effects would be of relatively short duration [REP6-018, Table 4.4].
- 5.11.43 Inter-related effects are described and predicted at the end of each topic section in the ES and the potential interactions described together with any mitigation. No inter-related effects are predicted to be of greater significance than the individual impacts in isolation [APP-029 and APP-030].
- 5.11.44 The ExA is satisfied with the approach adopted by the Applicant for its assessment of cumulative and inter-related effects. In Section 4.4 of our report, we have considered objections on the grounds of

²⁵⁸ EN-1, para 4.2.5 and para 4.2.6

inadequate CEA. As stated there, we are satisfied with the projects included in the CEA and with the process the Applicant has implemented for updating the CEA, which we consider is in accordance with EN-1. We also note the Councils' agreement over the developments to be scoped in and out of the CEA [REP6-012, ID4.31.1 to 4.31.2] and that the approach of a separate chapter for CEA was at the request of the Councils [REP6-018].

- 5.11.45 The ExA is content with the findings of the Applicant's CEA and inter-related effects assessment. We consider the Applicant has demonstrated thorough use of available details of other proposed development for CEA and has applied the ES methodologies. Where further details have become available during the Examination, appropriate updates have been provided.

6 FINDINGS AND CONCLUSIONS IN RELATION TO THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE BROAD OAK RESERVOIR PROPOSAL

6.1 INTRODUCTION

THE DEVELOPMENT CONSENT ORDER AND THE RESERVOIR

6.1.1 The Broad Oak reservoir is proposed by South East Water (SEW) in the valley of the Sarre Penn watercourse to the north east of Canterbury. The reservoir is intended to become operational by 2029 [REP2-099], and the proposed development, which is the subject of the application, would cross land that has been acquired by SEW primarily for reservoir mitigation purposes. This land, which lies adjacent to the proposed reservoir itself, would particularly be used for:

- the diversion of the Sarre Penn;
- ecological and landscape mitigation; and
- recreational use.

6.1.2 A key objective of the reservoir mitigation proposals would be to ensure compliance with the requirements of the Water Framework Directive (WFD). The WFD aims to enhance the status, and prevent further deterioration, of surface water bodies, groundwater bodies and their ecosystems.

6.1.3 SEW objected to the application by way of a Relevant Representation (RR) [RR-014] and then by a more detailed Written Representation (WR) [REP2-099], which it supplemented by multiple representations during the Examination. These representations were made on the basis of conflicts between the reservoir proposal and the proposed development, which SEW maintained would make the reservoir undeliverable. SEW also suggested alternatives in terms of the route of the proposed development in the area of the reservoir proposal. The WR was not withdrawn during the Examination. Representations from other Interested Parties (IPs) also carried objections in terms of these conflicts.

CHAPTER STRUCTURE

6.1.4 A considerable amount of detailed information was received on matters associated with the reservoir proposal during the Examination, including some 260 documents from SEW. Much of this information was necessary to enable the ExA to fully examine the WR from SEW, and SEW has provided a list of submissions, organised by topic [REP9-004]. The consideration of matters associated with the reservoir proposal however relates to a potential future conflict and, on this basis, it is somewhat separate from other matters relating to the Examining Authority's (ExA's) consideration of the application. This potential future conflict is therefore presented as a separate chapter in

this report which covers a range of physical and Development Consent Order (DCO) issues.

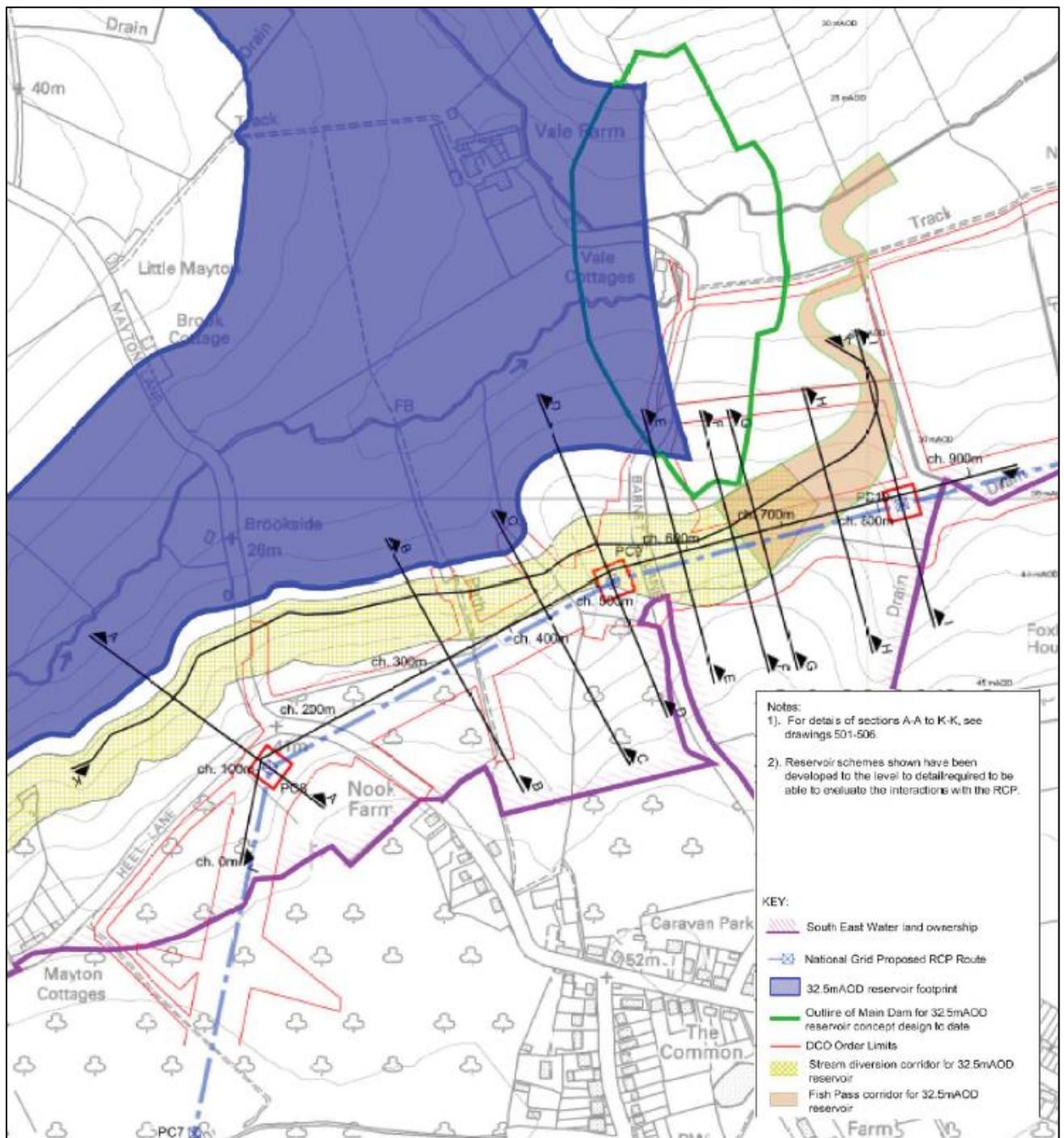
- 6.1.5 This chapter separates matters into physical interaction and DCO protective provisions. Under physical interaction, the SEW and other objections are described. The Applicant's response is then explained and the ExA's interim conclusions reported upon. Changes that could be made to the application, to reduce potential harm, are then considered leading to an overall ExA's conclusion on physical interaction.
- 6.1.6 Under DCO protective provisions the SEW objection in this regard is presented and the Applicant's response and SEW rebuttal are described. The ExA's consideration and conclusions are then explained. Finally, the overall ExA's conclusions are set out in terms of physical interaction, DCO protective provisions, and corresponding amendments to the Examination design drawings.

RESERVOIR STATUS

- 6.1.7 The reservoir proposal is included in the SEW Water Resources Management Plan 2014 (WRMP14), which covers the period from 2015 to 2040 [REP2-101 to REP2-109]. WRMP14 sets out how SEW intends to secure water supplies for its customers and has been subject to a strategic environmental assessment. WRMP14 carries no particular authority as a planning document.
- 6.1.8 The reservoir forms part of a range of proposed WRMP14 measures in relation to future water supply. SEW has purchased land for the purposes of the reservoir [REP6-043 and REP6-052 to REP2-054]. The reservoir has been developed to date using the Water Resources in the South East Group model and has been subject to consultation with Ofwat²⁵⁹.
- 6.1.9 The WRMP14 reservoir at Broad Oak would have a top water level of 32.5m Above Ordnance Datum (AOD), although WRMP14 suggests that this is to be confirmed [REP2-109]. The current SEW position is that a reservoir with a top water level of 36m AOD is the likely solution to supply requirements. SEW is however of the view that the final scheme could lie between the two top water levels as a result of design work yet to be carried out [REP2-099].
- 6.1.10 The following plan is an extract from a drawing that was agreed between the Applicant and SEW and submitted to the Examination at Deadline (DL) 4 [REP4-056]. The extract is not to scale. It shows the relationship between the proposed development and the 32.5m AOD reservoir proposal and particularly:

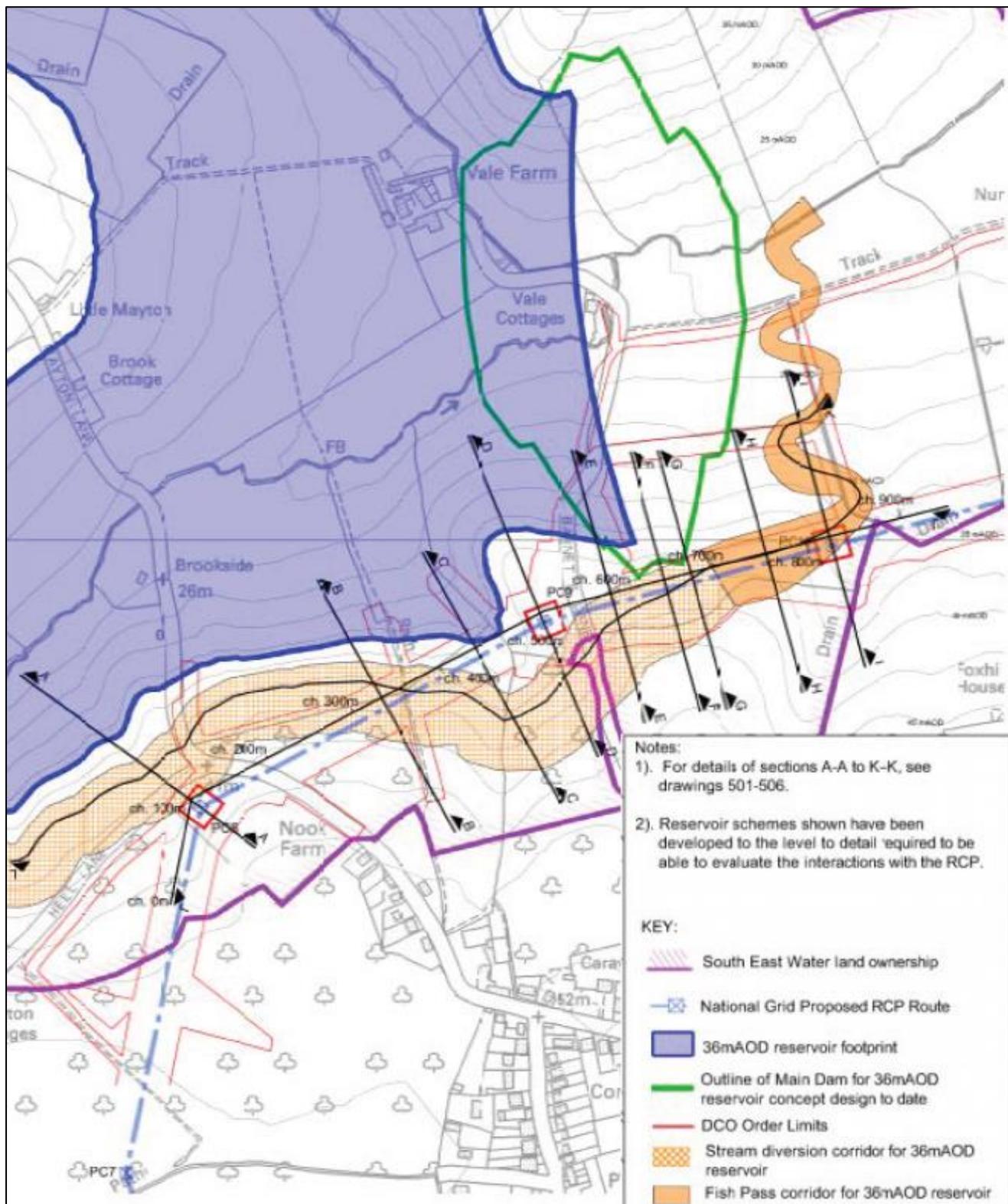
²⁵⁹ The Economic Regulator of the Water Sector in England and Wales

- the route and pylon positions of the proposed development, from the application design drawings;
- the 32.5m AOD reservoir footprint, or water surface;
- the outline of the main dam for the 32.5m AOD reservoir;
- the Sarre Penn stream or river diversion corridor for the 32.5m AOD reservoir (this is the corridor within which excavation for the cutting, where the diversion would be located, would be likely to take place); and
- the Sarre Penn fish pass corridor for the 32.5m AOD reservoir (this is the corridor within which excavation for the cutting, where the fish pass would be located, would be likely to take place).



6.1.11 The following plan is an extract from a drawing that was agreed between the Applicant and SEW and submitted to the Examination at DL4 [REP4-064]. The extract is not to scale, and the Panel is of the view that the reference to drawings 501 - 506 in the notes on the drawing should read 602 - 606. The drawing shows the relationship between the proposed development and the 36m AOD reservoir proposal and particularly:

- the route and pylon positions of the proposed development, from the application design drawings;
- the 36m AOD reservoir footprint, or water surface;
- the outline of the main dam for the 36m AOD reservoir;
- the Sarre Penn stream or river diversion corridor for the 36m AOD reservoir (this is the corridor within which excavation for the cutting, where the diversion would be located, would be likely to take place);
- the Sarre Penn fish pass corridor for the 36m AOD reservoir (this is the corridor within which excavation for the cutting, where the fish pass would be located, would be likely to take place); and
- the positions of the sections across the river diversion and fish pass which are referred to later in the report.

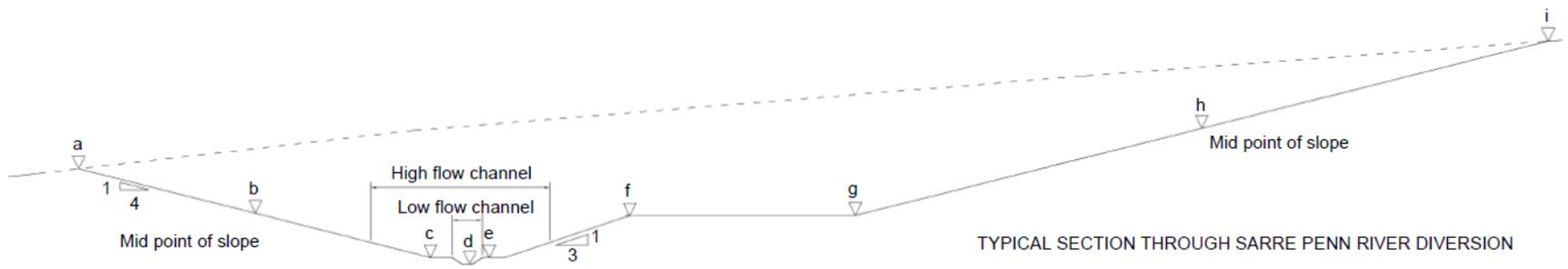


6.1.12 All of the reservoir details on these plans have been taken from the reservoir concept design undertaken by SEW to date.

6.1.13 The following section is an extract from a drawing that was agreed between the Applicant and SEW and submitted to the Examination at DL4 [REP4-057]. The extract is not to scale. It shows an example cross section of the Sarre Penn river diversion generally viewing from west to east with north to the left. The cross section particularly shows:

- the river diversion cutting (a to i);
- the river diversion cutting slope (a to c and e to i);
- the riparian corridor (b to h);
- the riparian or riverside planting (b to h);
- the land planting (b to beyond a and h to beyond i);
- the high canopy forest woodland mitigation (b to beyond a and h to beyond i);
- the river or stream diversion, watercourse, waterbody or channel (d);
- the floodplain (c and e);
- the river banks (c and e); and
- the berm or access berm (f to g).

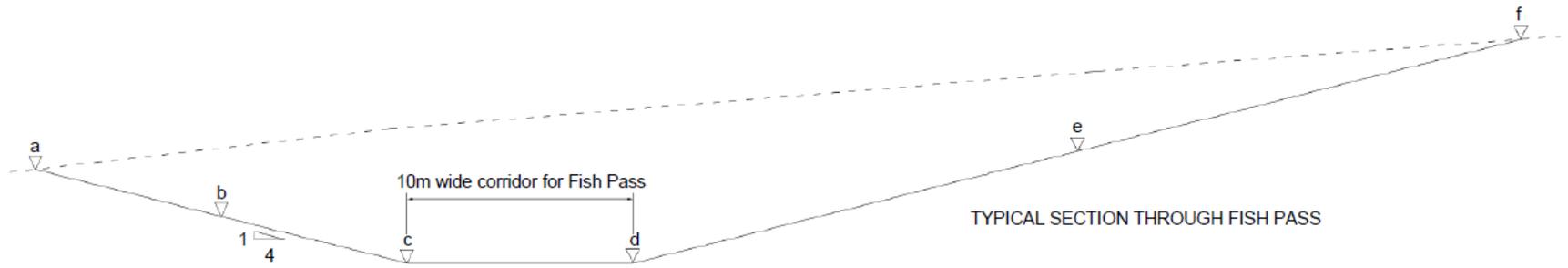
KEY FOR DIMENSION TABLES FOR SECTIONS THROUGH SARRE PENN RIVER DIVERSION



6.1.14 The following section is an extract from a drawing that was agreed between the Applicant and SEW and submitted to the Examination at DL4 [REP4-057]. The extract is not to scale. It shows an example cross section of the Sarre Penn fish pass generally viewing from south to north with west to the left. The cross section particularly shows:

- the fish pass cutting (a to f);
- the fish pass cutting base (c to d);
- the fish pass cutting slope (a to c and d to f); and
- the riparian corridor (b to e).

KEY DIMENSION TABLES FOR SECTIONS THROUGH FISH PASS



EXAMINATION CHRONOLOGY

- 6.1.15 The matters raised in the RR and WR from SEW were the subject of a number of Issue Specific Hearings (ISHs) and many representations during the Examination. The SEW objection was raised at the Preliminary Meeting prior to the submission of the WR [EV-011 to 013]. The WR referred to a number of previous reports which had considered the interrelationship between the two proposals. Indeed, some of these reports had been jointly commissioned by the Applicant and SEW. Following the RR, the ExA asked a number of first written questions in relation to the matters raised [PD-006].
- 6.1.16 The Examination timetable included ISHs on the Broad Oak reservoir proposal, and the first of these was held on 29 July 2016 following submission of the WR [EV-026 to 031]. The agenda comprised justification for the reservoir top water levels, interactions with the Sarre Penn watercourse diversion, SEW suggested alternatives for the proposed development, adequacy of the Environmental Statement (ES) and policy context. Following each hearing, the ExA produced a Hearing Action Points List (HAPL) to confirm the requests for further information made by the ExA during the hearing. The first Broad Oak reservoir HAPL included a request for a topic based statement of common ground (SoCG) [EV-031, Action 3]. The topics covered in the SoCG were:
- engineering and construction;
 - ecology and biodiversity; and
 - landscape and visual impact and amenity [REP5-009].
- 6.1.17 The HAPL also included a request relating to agreed drawings to show the physical interaction between the proposed development and the proposed reservoir [EV-031, Action 8]. These drawings were termed 'Spot Height Plans' and were agreed between the Applicant and SEW [REP4-056 to 070]. Agreed longitudinal sections along the proposed Sarre Penn river diversion were subsequently added to this set of drawings [REP5-031, REP3-033, REP6-055 and 056].
- 6.1.18 The ExA then asked a number of second written questions on this subject [PD-009]. Of particular note are responses from SEW in relation to the gradient of a proposed Sarre Penn fish pass [REP4-049, Q2.3.18] and the use of the 36m AOD top reservoir water level Sarre Penn diversion route for top water levels between 32.5 and 36m AOD [REP4-049, Q2.3.19].
- 6.1.19 The ExA held a second ISH on this subject on 28 September 2016 [EV-039 to 044]. The agenda included the topic based SoCG and spot height plans, habitat incompatibility and the position of the Environment Agency (EA). The HAPL included further information on additional reservoir costs [EV-040, Actions 1 and 2 and REP5-015 and 025], bird collision risk [EV-040, Action 4 and REP5-027], additional

DCO provisions [EV-040, Actions 6 and 7 and REP5-030], potential positions for Pylon PC10 which differ from those shown on the application design drawings [EV-040, Action 13 and REP5-016] and the conductor clearance envelope [EV-040, Action 11 and REP5-016].

- 6.1.20 The ExA also held a Compulsory Acquisition Hearing (CAH) on 19 October 2016 which included the consideration of compulsory acquisition and related matters in respect of the Broad Oak reservoir proposal [EV-055 to EV-059]. The HAPL included further information on potential positions for Pylon PC10 [EV-056, Action 1 and REP6-009] and additional DCO provisions [EV-056, Actions 2 and 3 and REP6-009 and 037].
- 6.1.21 The ExA held the third DCO ISH on 9 and 10 November 2016 which also dealt with matters relating to this subject [EV-065 to 067]. The agenda included potential positions for Pylon PC10 and protective provisions which could be included in an rDCO. The HAPL requested further information on these matters [EV-070, Action 36, REP7-008, 035 and 037, REP8-021 and 024 and REP9-003 for Pylon PC10 and EV-070, Actions 41 and 42, REP7-003, 008, 036 and 039 and REP8-018 and 023 for protective provisions].
- 6.1.22 During the course of the Examination, the Panel undertook a number of Unaccompanied Site Inspections (USI) in the Broad Oak area. During an Accompanied Site Inspection (ASI), we also gained access to private land to inspect the locations of the interactions between the proposed development and the reservoir proposal. At the ASI, the Applicant and SEW pointed out relevant features on the ground. SEW also gave us access to its land along the Sarre Penn, so we could view the existing conditions on one of our USIs [EV-002D and EV-014B].
- 6.1.23 Kent County Council (KCC) and Canterbury City Council wish to ensure that there is no unacceptable conflict between the proposed development and SEW's proposal for a reservoir at Broad Oak [REP2-061]. At the start of the Examination, they urged the ExA to take account of these objections to ensure that there is no unacceptable conflict between the two proposals. At the end of the Examination, they maintained concerns over the potential impact of the proposed development on the reservoir proposal and KCC specifically objected to the use over an overhead line in this regard [REP8-014]. The EA attended ISHs and submitted representations on the reservoir proposal as indicated in the Examination library. The EA also agreed a SoCG with the Applicant on the matter [REP8-013].
- 6.1.24 Other representations included the Broad Oak Preservation Society (BOPS), Mr Holden and Mr Bullen, who objected to the proposed development and its associated vegetation management in the area of the Broad Oak settlement. They variously included concerns over the visual impact of the proposed pylons, including Pylon PC8, and supported the SEW alternatives which involved the undergrounding of cables [RR-040, RR-025, RR-032, REP2-085 and 232, REP3-043 and 048 and REP7-051].

TESTS

- 6.1.25 Section 104 of the Planning Act 2008 (PA2008) confirms that the Secretary of State must have regard to relevant National Policy Statements (NPSs) and any other matters which are both important and relevant to the decision, amongst other things. Section 104(3) requires the Secretary of State to decide the application in accordance with any relevant NPS except to the extent that one or more of the subsections 104(4) to (8) apply. Section 104(7) of PA2008 confirms that, even if the proposal is in accordance with the policies of the relevant NPSs, refusal would be appropriate if the adverse consequences of the proposal outweigh its benefits.
- 6.1.26 Here, the relevant NPSs are the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Electricity Networks Infrastructure (EN-5). Where these are relevant to specific points in the ExA's consideration of this matter, they are referred to in footnotes.
- 6.1.27 In terms of alternatives, EN-1 advises that their relevance is, in the first instance, a matter of law²⁶⁰ and that alternatives which are not among the main alternatives studied by the Applicant, as reflected in the ES, should only be considered if they are believed to be important and relevant to the decision²⁶¹. There is no general policy requirement in EN-1 to consider alternatives or to establish whether the project represents the best option²⁶² but where there is a policy or legal requirement to consider alternatives this should be done in a proportionate manner and in consideration of whether there is a realistic prospect of the alternative delivering the same infrastructure in the same timescale²⁶³.

6.2 PHYSICAL INTERACTION

INTRODUCTION

- 6.2.1 This section of the chapter considers the physical interaction between the proposed development and the future construction and operation of the reservoir proposal. This is structured in terms of the objection to the application from SEW, together with matters raised by other objectors and on which other objectors rely. The objection is identified in terms of the SEW need for the reservoir proposal, a summary of the objection and then specific interactions which concern SEW from the topic based SoCG. The physical interactions are generally taken along the route of the proposed development from Pylons PC8 to PC10, dealing with individual pylons and conductor spans separately. The Applicant's response is then identified, being taken from the topic

²⁶⁰ EN-1, para 4.4.1

²⁶¹ EN-1, para 4.4.3

²⁶² EN-1, para 4.4.1

²⁶³ EN-1, para 4.4.3

based SoCG. We then consider the physical interactions in the order as set out above and summarise our findings. We then consider the detailed positioning of Pylon PC10, other matters including the SEW alternatives and finally conclude on physical interaction.

SOUTH EAST WATER OBJECTION

South East Water need for the proposed reservoir

- 6.2.2 SEW considers that the Canterbury district is, at times, subject to serious stress to the water environment [REP2-099]. This was particularly the case during the 2010 to 2012 drought. The area is reliant on groundwater sources, which are vulnerable because of supply quantity uncertainty. SEW is of the opinion that a better mix is therefore required to improve supply resilience [REP2-101 to 108]. Furthermore, the emerging Canterbury District Local Plan Publication draft 2014 sets out opportunities for housing growth in the area [REP2-111]. SEW considers that there is thus a distinct need for an additional water resource, and this need extends into nearby water companies' areas [REP2-100].
- 6.2.3 The WRMP14 puts forward a reservoir at Broad Oak. SEW is of the opinion that this site is the only one suitable in North Kent in view of its topography in the valley of the river Sarre Penn and the presence of clay. The proposal is longstanding and the only WRMP14 option in Water Resource Zone 8. SEW sees it as being essential to safeguard future water supply and in the wider public interest and also the most appropriate in terms of low carbon parameters.
- 6.2.4 The WRMP14 reservoir at Broad Oak would have a top water level of 32.5m AOD [REP2-107]. WRMP14 does however suggest that a slightly larger option might be identified through further work [REP2-109]. The current SEW position is that a reservoir with a top water level of 36m AOD is the likely solution to supply requirements in terms of future proofing and a least cost per mega-litre of water supplied [REP5-040]. SEW is however of the view that the final scheme could lie anywhere between the two top water levels as a result of design work yet to be carried out.

South East Water summary of all physical interactions

- 6.2.5 The SEW position is set out in its WR [REP2-099] and the agreed topic based SoCG between the Applicant and SEW [REP5-009]. In summary, the reservoir proposal would require the diversion of the Sarre Penn river around the reservoir [REP2-211]. Such a diversion would need to incorporate a fish pass to accommodate level differences at the dam. The Sarre Penn supports: salmonids, particularly brown trout; European eels; and bullhead. EU Directives and policies require that there is no deterioration in the conservation status for these species.
- 6.2.6 The reservoir proposal would also need to comply with the WFD. This would require SEW to maintain the status or potential status of the

Sarre Penn waterbody in any diversion and maintain an equivalent ecological value. Compliance with the WFD would be a matter considered in terms of any future planning application for a reservoir.

- 6.2.7 Moreover, the EA would have the power to direct matters relating to the diversion under the WFD, the Salmon and Freshwater Fisheries Act 1975 and the Eels (England and Wales) Regulations 2009. The EA is particularly concerned that the reservoir proposal should include shading of the diverted waterbody, especially in and at the top of the fish pass, careful watercourse design and habitat creation in the riparian corridor of the watercourse. Shading of the waterbody would be important to ensure that the waterbody remains cool and well oxygenated. This would become more important when considering climate change. Natural England (NE) would require a significant amount of woodland and semi-natural habitat to be provided around the reservoir in the context of the areas of woodland with statutory designations in the surrounding area.
- 6.2.8 SEW is of the view that the proposed development and the reservoir cannot co-exist. This is because the presence of the overhead line, would prevent the provision of key elements of the Sarre Penn river watercourse diversion, the fish pass and planting. Whilst there could be individual solutions to each interaction they would often not be acceptable in terms of ecology, landscape, amenity and compliance. The SEW case is that the overhead line would therefore significantly prejudice the delivery of the reservoir and, at the time of its WR, no protective provisions had been proposed by the Applicant to address this.
- 6.2.9 SEW is of the opinion that the proposed development:
- must not prejudice the delivery of the reservoir;
 - should adopt alternative routes and/or technologies in the area of the reservoir (these are referred to as the SEW alternatives hereafter); and
 - must secure SEW's position by mean of appropriate provisions in the DCO if the Order is to be made.
- 6.2.10 The SEW alternatives are as follows. Alternative A comprises overhead lines following a route to the south of that proposed in the application [REP2-229 and 230]. Alternative B comprises the removal of Pylons PC7 to PC11, and their replacement with underground cables placed in trenches [REP2-231 and 232]. Alternative C similarly comprises the removal of Pylons PC7 to PC11, and their replacement with underground cables placed within ducts drilled to a depth of 10m underground [REP2-228, REP2-233 and REP2-234].
- 6.2.11 The design of the Sarre Penn diversion and fish pass is at a very early stage, and indeed even this design has been advanced due to the need to investigate interactions between the proposed development and the reservoir proposal. There are however envisaged routes for a diversion and fish pass at the 32.5 and 36m AOD reservoir top water

levels. These are however subject to detailed design and liaison with the EA (generally in terms of the watercourse) and NE (generally in terms of wider designated site impacts).

- 6.2.12 The topic based SoCG considers reservoir top water levels of 32.5 and 36m AOD and then circumstances between these two water levels. SEW is of the firm view that, at this stage, it is necessary to consider a range of top water levels between 32.5 and 36m AOD. SEW argues that this is in order to ensure that the reservoir proposal can be progressed in the most cost efficient and future proofed manner, minimising any impact on the environment.
- 6.2.13 From the topic based SoCG, it can be seen that the greater interaction between the proposal and the reservoir would occur with a reservoir top water level of 36m AOD. For the purposes of this report, the ExA has considered the interactions between the proposed development and the indicative 36m AOD Sarre Penn diversion route in the first instance. The specific physical interactions set out below therefore relate to this route. The ExA has then come to a conclusion on the basis of this route, but has taken into account the uncertainties and the need for further work and diversion route flexibility which has been put before it in the Examination.

South East Water specific physical interactions

- 6.2.14 The topic based SoCG, requested at the first Broad Oak reservoir ISH on 29 July 2016 and submitted at DL5, sets out the parties' positions on specific interactions along the proposed route near to the reservoir [REP5-009]. The following interactions are a summary of those identified by SEW for the 36m AOD top water level reservoir and the application design drawings. The interactions are set out in the order of the SoCG which is:
- engineering and construction;
 - ecology and biodiversity; and
 - landscape and visual amenity.

- 6.2.15 The interactions also relate to the SEW spot height plans and sections submitted at DL4 [REP4-064 to 070] and DL5 [REP5-033 and REP6-056]. This chapter of our report should be read alongside these plans and sections.

South East Water engineering and construction interactions

- 6.2.16 The river diversion cutting would be situated adjacent to **Pylon PC8 and Pylon PC9** [REP4-065]. At Pylon PC8, the cutting would be situated within the pylon maintenance and exclusion zones. The exclusion zone is an area within which activities, such as excavation, which could weaken the pylon foundations would be prohibited [REP5-020]. At both of these pylon locations, SEW considers that the presence of the pylons would result in construction, health and safety and operational constraints [REP4-067 and REP5-009, ID 1.2.1a to d and 1.2.3a to d]. In particular, the presence of Pylon PC8 could

require an alteration to the indicative alignment of the river diversion route.

- 6.2.17 SEW acknowledges that it would be feasible to work under the conductors, in accordance with Health and Safety Executive Guidance GS6 (GS6) [REP3-034]. SEW is however of the opinion that the Applicant has failed, in its duties under the Construction Design and Management Regulations 2015 (CDM 2015), to eliminate the hazard. Such a measure could have been achieved in a reasonably practical manner by adopting one of the alternative routes or technologies proposed by SEW.
- 6.2.18 The river diversion would be situated below the conductors **between Pylons PC8 and PC9**. At SEW Section B-B, a minimum vertical safety clearance of some 10m would exist between the conductors shown on the design drawings and the excavated profile of the river diversion cutting [REP4-066 and 070, REP5-009, ID 1.2.2a to c and REP6-056]. This clearance would be less during excavation of the river diversion cutting from the original ground level, but it would not be less than 8.1m, which is the statutory clearance for conductors above ground level. The 10m clearance applies to management activities apart from those involving tree climbing, for which the vertical clearance would be 2.2m less. SEW considers that the presence of the conductors would again result in construction, health and safety and operational constraints as set out above.
- 6.2.19 Similar circumstances would exist between **Pylons PC9 and PC10**, but here the minimum vertical safety clearance, at SEW Section E-E, would be some 13m [REP4-067 to 069 and REP5-009, ID 1.2.4a to d]. SEW is however of the opinion that the impact here is the greatest along the length of the river diversion and fish pass due to the length of interaction. This is because the route of the diversion would generally follow the route of the proposed overhead line. Of further concern to SEW is the clearance for construction of an access bridge to the reservoir crest, which would be just greater than 8.1m [REP2-205].
- 6.2.20 **Pylon PC10** would be situated within the Sarre Penn fish pass cutting with fish pass design, construction, health and safety and operational constraints [REP4-069 and REP5-009, ID 1.2.5a to d]. The presence of the pylon would require an alteration in the indicative alignment of the fish pass which SEW believes would have a significant effect on the level of the pass in relation to the ground slope into which it would be cut. This could lead to the pass having to be located on top of an embankment on sloping ground with consequential engineering difficulties. The SEW case is that restricting flexibility on detailed reservoir design at this critical point and in this manner would be likely to result in serious detriment to its ability to perform its statutory functions.

South East Water ecology and biodiversity interactions

- 6.2.21 Elements of the required woodland connectivity, in respect of land planting outside of the river diversion riparian corridor, would be situated below the conductors **between Pylons PC7 and PC8** [REP5-009, ID 2.2.1b]. This would have implications for planting and future management. Coppice planting and management would be possible under the conductors, as opposed to clear felling. SEW considers however that coppice would not be compatible with the required mature high canopy forest woodland connectivity for reservoir mitigation. Such connectivity would be necessary to deliver biodiversity objectives and provide links between mature woodland blocks in the West Blean and Thornden Woods Site of Special Scientific Interest (SSSI).
- 6.2.22 SEW holds this view because it believes that the presence of the conductors would result in constraints on reservoir mitigation planting, species selection and mix constraints. For example, mature and undisturbed high level connectivity species such as sessile and English oak would be difficult to provide [REP4-053]. These species would not be compatible with coppice management, and other forms of management would require an additional 2.2m vertical clearance to the lowest conductors. Furthermore, frequent coppice management would cause much ground cover damage within the heavy and often wet clay soils as opposed to the less frequent management requirements of a high canopy woodland once established.
- 6.2.23 SEW is of the opinion that the presence of **Pylon PC8** would result in similar land planting constraints which would extend into the river diversion cutting due to the pylon exclusion zones [REP5-009, ID 2.2.2e]. Any future movement of the pylon within the limits of deviation could also require steeper engineered cutting slopes which would be unacceptable from an ecological and biodiversity standpoint.
- 6.2.24 The river diversion cutting would be situated below the conductors **between Pylons PC8 and PC9**. Again, SEW is of the view that the presence of these conductors would result in similar land planting constraints to those previously described [REP5-009, ID 2.2.3b]. It also considers that the constraints would have a substantial impact on the required mature wet woodland riparian planting alongside the river diversion in terms of species selection and its functionality [REP5-009, ID 2.2.3c and e].
- 6.2.25 Relevant elements of this functionality, which SEW say would be subject to a substantial impact, are as follows.
- A wet woodland would support high invertebrate numbers.
 - Older trees would be required for the deposition of woody material into the watercourse.
 - Larger woody material would be important to give different niches and habitats for fish and invertebrates. It would also trap fine and coarse woody material.

- Floodplain and river bank alders would be necessary for water related invertebrates such as rare crane flies together with important submerged and floating roots.
- Further elements of functionality are that marginal, shrub, understorey and canopy vegetation layers would be required for vertical and horizontal structure and connectivity.
- Cooler, shaded water would also give higher dissolved oxygen levels for salmonids. SEW is however of the opinion that it could be possible to maintain vegetation connectivity along the Sarre Penn that would provide a level of shading and be suitable as a wildlife corridor for species such as dormouse.

- 6.2.26 The SEW case is that the minimum vertical safety clearance of some 10m, or the lesser tree climbing management activity clearance, would make this type of environment undeliverable. Furthermore, frequently coppiced woodland, with a frequency of intervention of between two and ten years with consequential access damage, would not allow the creation of the functionality referred to above.
- 6.2.27 The presence of **Pylon PC9** would necessitate future pylon and conductor maintenance access through a sensitive area of vegetation in terms of reservoir mitigation. SEW considers that this access would cause heavy soil and vegetation damage as previously described. It would also result in similar land and riparian planting constraints to those set out above [REP5-009, ID 2.2.4b and c]. The presence of this pylon would also restrict river diversion and fish pass movement outside of the indicative cutting should this flexibility be required [REP5-009, ID 2.2.4d and e].
- 6.2.28 The river diversion and fish pass cutting would be situated below the conductors **between Pylons PC9 and PC10**. SEW is of the view that the presence of these conductors would result in similar maintenance and land and riparian planting constraints to those previously described [REP5-009, ID 2.2.5a to c]. At this location however, the impact on the riparian planting and woodland habitat would be particularly substantial [REP5-009, ID 2.2.5d and e]. This is because a significant length of the watercourse would lie under the conductors at a critical point at and just beyond the top of the fish pass where fish would be at their highest levels of stress.
- 6.2.29 The SEW position is that this, when combined with the unprecedented nature of the diversion and fish pass, the difficulty of providing sufficient shade from coppicing and meeting the WFD requirements, would result in an unacceptable risk to the deliverability of the reservoir. The unprecedented nature of the diversion is because the design of a fish pass of this scale and vertical change in height is unique and untested against the WFD. It would therefore be essential to retain flexibility to deliver the fish pass.
- 6.2.30 SEW believes that the presence of **Pylon PC10** within the Sarre Penn fish pass cutting would result in similar maintenance and land and

riparian planting constraints to those previously described [REP5-009, ID 2.2.6a to c].

- 6.2.31 In terms of the fish pass, SEW is of the opinion that any alteration in the indicative alignment of the fish pass to avoid Pylon PC10 would carry a risk of ecological disconnection [REP5-009, ID 2.2.6d]. This disconnection would be between the pass and the surrounding vegetation necessary to support the required natural environment of the pass. It would be due to the re-aligned fish pass having to be elevated on an embankment and also because of the engineering solution necessary to line the watercourse of the fish pass. Moreover, all of these risks and significant constraints would occur in an ecologically critical area where more works may be required in any event.
- 6.2.32 SEW also emphasises that the continuation of the riparian planting along the fish pass, to keep the water shaded and cool, has been identified by the EA and NE as being particularly important. Its purpose would be to limit stress for the fish passing through the long fish pass. This is because the water would need to benefit from shade otherwise it would heat up and effectively become a thermal and de-oxygenated barrier to the passage of fish and the operation of the reservoir mitigation. SEW believes that the required shady conditions would be difficult to establish on top of an embankment supporting a re-aligned fish pass.

South East Water landscape and visual amenity interactions

- 6.2.33 In terms of landscape and visual amenity, the application proposal lies in close proximity to the Blean Woods Special Landscape Area (SLA), which is one of the largest areas of ancient woodland in England [REP5-009, ID 3.1]. In order to secure planning permission for the reservoir, SEW advises that it would need to mitigate any adverse effects of the reservoir on the SLA [REP5-009 ID 3.2]. SEW intends that this would be done by providing a continuous high canopy woodland along the southern side of the reservoir. SEW maintains that this would provide a landscape setting for the reservoir in keeping with the character of the area, soften any engineered features and mitigate adverse views from sensitive receptors. It would also provide an attractive and tranquil landscape for recreation.
- 6.2.34 The SEW case is that the proposed development would prevent the establishment of high canopy trees and their screening. It would result in the area already being subject to an incongruous and prominent feature within a regularly clear felled corridor. This feature would also affect the enjoyment of recreational users of the water and publicly accessible areas around the reservoir and would reduce the amenity value of the reservoir and the area of the proposed visitor centre [REP5-009, ID 3.3].
- 6.2.35 Without mitigation, receptors that would be subject to visual impacts from the reservoir would include those using public footpaths and

residents [REP5-009, ID 3.4]. SEW argues that the proposed development, and its associated vegetation management requirements, would prevent the provision of elements of reservoir mitigation to reduce these visual impacts. This mitigation could be integral to achieving planning consent for the reservoir proposal.

- 6.2.36 The risk of bird collision has also been included in the landscape and visual amenity section of the topic based SoCG [REP5-009, ID 3.5]. SEW is of the opinion that there would be a significant risk associated with the increased numbers of birds which would be attracted to the reservoir. This would be while any broad leaf planting is establishing and potentially when this planting is mature. This risk may not be capable of adequate mitigation [REP2-201, REP3-031, REP4-042 and 046]. SEW requests, as a minimum, a legally binding commitment from the Applicant to implement or fund bird collision mitigation measures if required. This would be when the reservoir comes forward and after a definitive assessment has been carried out.

APPLICANT'S RESPONSE

Summary

- 6.2.37 Whilst the Applicant acknowledges that the reservoir is included in the WRMP14, it considers there is no guarantee that a reservoir scheme will be pursued, or achieve the necessary consents, funding and approvals required to enable it to be developed [REP5-009]. The Applicant is of the opinion that, as the reservoir is at a concept stage with limited design information, this makes it inappropriate for it to be included in the Applicant's assessments of cumulative impacts. Furthermore, the Applicant considers that SEW is incorrectly taking interactions between the proposed development and reservoir proposal to represent cumulative impacts, which is not the case. The Applicant considers that the proposed development would form part of the baseline for SEW's assessment of effects of the reservoir proposal, subject to the application Order being made, and that the proposed development would then need to be taken into account in the reservoir proposal's detailed design work.
- 6.2.38 The Applicant's position is that the two projects can co-exist and that the detailed design of the reservoir proposal, which has yet to be done, would need to consider the proposed development as part of the existing baseline which may result in the consideration of some minor design changes to the reservoir proposal and elements of its mitigation measures.

Engineering and construction interactions

- 6.2.39 The Applicant notes that CDM 2015 sets out the 'General principles of prevention' as to:
- avoid risks where possible;
 - evaluate those risks that cannot be avoided; and
 - put in place proportionate measures that control them at source.

The Applicant's view is that the controls within GS6 are sufficient, and the measures proposed by SEW are disproportionate. The Applicant believes that the design of the reservoir proposal could take account of the in-situ proposed development and both schemes could co-exist.

Ecology and biodiversity interactions

- 6.2.40 The Applicant believes that the proposed development and the reservoir proposal could co-exist, and has provided solutions in respect of engineering design [REP2-017, Appendix F]. The Applicant has suggested a planting mix that could function underneath the proposed development, but that further consultations with SEW would be required to ensure that it met SEW's requirements in the future [REP2-017, Appendix F]. The Applicant has provided further selections of species [REP2-014] that could be planted under the proposed development. It has stated that, as long as species are locally appropriate, there would be no restrictions that would prevent SEW from fully meeting the function, diversity, species and regulatory requirements that SEW would have. The Applicant believes that the alternative designs for the reservoir proposal would be sufficient to allow it to come forward alongside the proposed development. It is also of the view that SEW would be able to deliver all necessary environmental mitigation.
- 6.2.41 The Applicant has not assessed the cumulative impact of individual aspects of the proposed development. The Applicant states that this is again because, if development consent is granted and the project developed, it would be in-situ and form part of the baseline when the reservoir is considered in more detail. The Applicant considers that the required ecological function of the reservoir mitigation would be achievable with both projects in place. The Applicant also considers it impossible to undertake a robust bird strike assessment as in its opinion there is no representative data.

Landscape and visual impact and amenity interactions

- 6.2.42 The Applicant considers that the areas of interaction between the proposed development and the reservoir proposal would be very localised. They would not prevent SEW from achieving their wider landscape mitigation requirements in relation to woodland planting and visual screening. The Applicant also considers that these very localised interactions would not reduce the enjoyment for users of the recreational resources through an impact on their amenity. The Applicant therefore believes that the landscape and amenity value of the Reservoir proposal would not be reduced as a result of the proposed development.
- 6.2.43 The Applicant's view is that it would not be appropriate for the reservoir proposal to be included within the Landscape and Visual Impact Assessment for the proposed development. This is because it does not form part of the existing environmental baseline on which the Environmental Impact Assessment has been based. The Applicant

considers that, should the proposed development gain consent, the overhead line would form part of SEW's baseline for assessing the potential effects of the reservoir proposal on landscape character and on views.

EXAMINING AUTHORITY'S CONSIDERATION OF PHYSICAL INTERACTIONS BETWEEN THE PROPOSED DEVELOPMENT AND THE RESERVOIR PROPOSAL

- 6.2.44 The ExA has considered the status of the reservoir proposal and then the physical interactions between the application design drawings and the proposed reservoir in the same manner as set out in the Topic SoCG [REP5-009]. In order to consider these interactions, we refer to the sections across the river diversion and fish pass that have been agreed between the Applicant and SEW [REP4-065 to REP4-069]. Whilst these individual sections have not been reproduced within our report, the sections follow the landform of the typical river diversion and fish pass sections included earlier in this chapter. The locations of these sections are shown on the plan included earlier in this chapter.
- 6.2.45 The Panel has considered these interactions in accordance with s104 of PA2008, including any matters that we think are both important and relevant to our recommendation. We have also had regard to the relevant NPSs, EN-1 and EN-5.

Status of the reservoir proposal

- 6.2.46 We consider that the need case for the reservoir proposal set out by SEW appears to be realistic in terms of the information within WRMP14. We are however of the view that there is no guarantee that a reservoir scheme will be pursued, or achieve the necessary consents, funding and approvals required to enable it to be developed. Furthermore, WRMP14 is not a planning policy document and the land for the reservoir, although owned by SEW, is not safeguarded in the adopted Local Plan²⁶⁴ or the emerging draft Local Plan²⁶⁵ [REP8-014]. We also note that SEW refers to various levels of conflict, such as 'cannot co-exist', 'significantly prejudice', 'restrict flexibility' and 'unacceptable risk to delivery'. This variety emphasises to us the absence of a definitive proposal at the current time. We therefore give the status of the reservoir proposal moderate weight.

Engineering and construction interactions

- 6.2.47 **Pylon PC8** would be situated adjacent to the river diversion cutting. It would however be situated at the top of the 10m deep cutting slope and some 50m from the river bank at SEW Section A-A [REP4-065]. In the Panel's view, this would limit any effect on the construction, health and safety and operation of the river diversion.

²⁶⁴ Canterbury District Local Plan 2006 (2009)

²⁶⁵ Draft Canterbury Local Plan Amendments (November 2015) and Potential Main Modifications (28 April 2016)

- 6.2.48 SEW acknowledges that it would be feasible to work under conductors in this area [REP3-034]. As argued by the Applicant, it is not uncommon for construction work to be carried out in close proximity to pylons, and we consider that the excavation of the slope of a cutting would not be a particularly complex operation [REP-017].
- 6.2.49 We do not agree with SEW that the Applicant has failed in its duties under the CDM Regulations. This is in view of the nature of this work and that one of the purposes of the regulations is to manage risk appropriately rather than eradicate all risk on every project, as set out by the Applicant.
- 6.2.50 Future work in the maintenance and exclusion zones, which would extend some 20m on to the river cutting slope, would be limited. We are also satisfied that any movement of the pylon, to accommodate ground conditions during detailed design for example, could be undertaken without detriment to the future river diversion in view of the degree of separation and the potential for local steepening of the slope.
- 6.2.51 **Pylon PC9** would be situated some 55m from the river bank at SEW Section D-D, and it would be set back from the top of the slope by approximately 35m [REP4-067]. We consider that this would result in fewer engineering and construction impacts on the river diversion than would be the case at Pylon PC8, which we have already found to be acceptable.
- 6.2.52 **Between Pylons PC8 and PC9**, at SEW Section B-B [REP4-066], the minimum vertical safety clearance of some 10m would exist half way up and at the top of the southern slope of the river diversion cutting. The half-way point would however be some 40m from the river bank. At the river banks, the clearance would be 34m, and the level of the banks would be over 6m lower than that of the mid-point down the slope. At SEW Section C-C [REP4-066], the only constraint would be a clearance of 34m over the northern limit of the river diversion cutting. We are satisfied that these clearances would not represent an unacceptable constraint on future construction activities.
- 6.2.53 Between SEW Sections B-B and C-C, the river diversion cutting would pass under the conductors. As a result of the cutting, the clearance would be some 16m over the river banks where the conductors would cross as shown on Section L-L [REP6-056]. It should be kept in mind however that the clearances shown on this section are based on management activities that involve climbing trees. For coppice management, the clearances can be increased by 2.2m, hence the addition to the clearance shown on the Section L-L. The clearances are also shown in relation to the high flow top water level, which is some 0.5m above the river banks. The high flows would not be able to be contained within the river channel itself, but would also flow in the floodplain to either side of the channel.

- 6.2.54 It is also of note that the conductors would pass over the river diversion cutting at an oblique angle with the greatest restrictions being in a corridor which would only be some 30m wide. The length of the river diversion cutting between Pylons PC8 and PC9 would be some 480m, compared to the total length of the river diversion and fish pass cutting which would be some 2,000m. As a result of all of the above points, we are satisfied that the clearances at the crossing point between Pylons PC8 and PC9 would not represent an unacceptable constraint on future construction activities.
- 6.2.55 **Between Pylons PC9 and PC10**, at SEW Section E-E, the minimum vertical safety clearance of some 13m would exist over the top of the northern slope of the river diversion cutting [REP4-067]. The clearance over the river banks would however be some 22m. At SEW Section F-F, the clearance over the river banks would be some 18m, and a minimum clearance of 15m would exist half way up and at the top of the northern slope of the river diversion cutting [REP4-068]. At SEW Section G-G, the clearance over the river banks would be some 17m, and a minimum clearance of 15m would exist over the bridleway and footpath access berm [REP4-068]. At SEW Section H-H, the clearance over the fish pass would be some 21m, and a minimum clearance of 18m would exist over the mid-point of the southern slope of the fish pass cutting [REP4-069]. At SEW Section I-I, the fish pass clearance would be some 27m, and a minimum clearance of 23m would exist at the top of the southern slope of the fish pass cutting [REP4-069].
- 6.2.56 SEW is of the view that the impact between Pylons PC9 and PC10 would be the most severe of all the impacts on engineering and construction along the length of the river diversion and fish pass. Whilst the length of any impact between these pylons may indeed be the greatest, the clearances are not the least. Furthermore, the length of interaction of some 240m between SEW Section E-E and Pylon PC10 should be seen in the context of the total length of interaction of some 800m along the indicative route of the river diversion and fish pass [REP6-056]. In terms of construction of a bridge to access the reservoir crest, we accept that the proposed development would restrict the possible types of bridge construction. We are however satisfied that sufficient construction clearance would exist at SEW Section F-F to allow a bridge to be constructed. As a result of all of the above points, we are satisfied that the clearances between Pylons PC9 and PC10 would not represent an unacceptable constraint on future construction activities.
- 6.2.57 At SEW Section I-I, the base of the fish pass cutting would lie adjacent to the base of **Pylon PC10** [REP4-069]. We consider that this conflict would not be capable of mitigation and would require the indicative route of the fish pass to be amended. Such an amendment would have to occur in an area which would be critical to the successful design of the fish pass, and this view is supported by the EA [EV-041 to EV-044]. The location of Pylon PC10 would also restrict future design flexibility in this critical area. Furthermore, the fish pass cutting would almost entirely lie within the maintenance zone for the pylon. We

therefore consider that the presence of Pylon PC10 would represent an unacceptable constraint on future construction activities.

- 6.2.58 As a result of all of the above points, we consider that the installation of the pylons and the associated conductors would have a limited effect on engineering and construction in relation to the 36m AOD river diversion channel and fish pass between Pylons PC8 and PC10, but not including Pylon PC10 itself. At Pylon PC10, the potential conflict identified would represent a significant risk to the provision of the fish pass and necessary reservoir mitigation and indeed to the provision of the reservoir as a whole.

Ecology and biodiversity interactions

- 6.2.59 The high level forest woodland mitigation for the reservoir would need to pass under the line of the conductors **between Pylons PC7 and PC8** [REP2-216]. However, the future mitigation land planting to form this woodland would inevitably have its connectivity broken by the presence of various physical constraints. These would include Mayton Cottages and the access road to them, the reservoir dam crest access road and the limited separation between the boundary of the SEW land ownership and the fish pass [REP4-064].
- 6.2.60 The crossing of the conductors would be different from the breaks in connectivity identified above, in that lower level coppice canopy could continue below the conductors. Coppice may not have the same functionality as the high level forest, and road crossings could have a greater degree of connectivity at higher vegetation levels than with conductor crossings due to overhanging branches. Coppice would however only be necessary over a small area compared to the area of the proposed woodland as a whole. These factors lead us to the view that the presence of the conductors would have a limited effect on the future provision of woodland mitigation.
- 6.2.61 We agree with SEW that coppice would require much more frequent management than high level forest, and that this would have the potential for understorey and ground damage. The area around the conductors between Pylons PC7 and PC8 however has nearby vehicular access at present and would be likely to have so in future with the reservoir in place [REP4-064]. This would mean that the distances between vehicular access and the coppicing work to be carried out, over which ground cover damage could occur, would not be great. When seen in the context of the limited areas to be coppiced, we therefore consider that it would be feasible to carry out this work without unacceptable ground cover damage.
- 6.2.62 The river diversion cutting would be situated adjacent to **Pylon PC8** [REP4-065]. The upper half of the river diversion cutting southern slope would lie within the pylon maintenance and exclusion zones. These would however represent restrictions at a single location and not along a corridor. The constraints on mitigation land planting and management would thus be less than those that we have previously

identified and found to have a limited effect between Pylons PC7 and PC8. This would be the case notwithstanding the planting prohibition restrictions at Pylon PC8.

- 6.2.63 The potential for the re-positioning of this pylon prior to its construction is considered later in this chapter. It would be the case however that any minor re-positioning to the north could be accommodated with, in our view, minor and not unacceptable steepening of the slope of the river diversion cutting. In our view therefore, the presence of Pylon PC8 would have little impact on mitigation land planting as a whole.
- 6.2.64 The river diversion cutting would cross below the conductors between **Pylons PC8 and PC9** [REP4-065]. The clearances between the conductors and the profile of the cutting have already been set out when we considered engineering and construction impacts. SEW is of the opinion that, with these clearances, it could be possible to maintain vegetation connectivity and a wildlife corridor for species such as dormouse and provide an adequate level of shading along the river diversion [REP5-009, ID 2.1.1b]. SEW however does not believe that it would be possible to deliver the required management to achieve this, because of vegetation height constraints and ground damage from coppicing activities.
- 6.2.65 The cutting, on its southern side, would comprise a slope of some 6m in length between the 1m wide river bank and the 10m wide access berm [REP4-057]. The riparian planting corridor would lie between the river and the top of this slope. The berm would carry a cycleway, bridle path and footpath together with operational maintenance access [REP5-043]. Where the conductors would cross, the minimum clearances vertically above this 6m slope would be some 16m at the bottom and some 14m at the top of the slope [REP6-056]. These clearances and the limited length over which they would be present would not, in our opinion, materially affect the quality of the public route along the river diversion cutting²⁶⁶.
- 6.2.66 A similar situation would exist on the northern side of the cutting. Here though, the slope described above would continue uninterrupted to the top edge of the cutting. The upper limit of the riparian planting would be at the same level as it would be on the southern side of the cutting. Clearances to the riparian planting would be similar to those that would exist on the southern side of the cutting.
- 6.2.67 SEW has produced a technical note [REP4-053] in support of its position on unacceptable conflict in the topic based SoCG. This note gives an example of short rotational coppice which shows re-growth of some 12m after 14 years. From the clearances identified above, we consider that such growth could be accommodated in the area below

²⁶⁶ EN-1, para 5.10.2

the conductors between Pylons PC8 and PC9. Indeed, SEW agrees that a mature coppiced woodland, with a rotation of between 12 to 20 years, would be likely to provide the level of shading required, a biodiverse resource and habitat connectivity [REP7-038].

- 6.2.68 It is also of note that this area of maximum constraint would comprise a corridor of some 30m in width crossing the river at an oblique angle. Outside of this area, clearances would rise rapidly to return to an unconstrained situation as shown on SEW Section B-B [REP4-066].
- 6.2.69 The SEW technical note [REP4-053] suggests that a three to five year tree cutting cycle would need to be implemented to enable tree clearances to be observed. Should this need to be the case, there is nothing to suggest to us that it could not be accessed from the 10m cycleway, bridle path, footpath and operational access berm. This access would run alongside the 6m wide riparian planted slope within which the coppice constraint corridor would be situated. In our opinion, this proximity of this formal access would keep any ground damage at a very low level because the vast majority of trafficking during coppicing would take place along the formal access.
- 6.2.70 The river diversion channel would be some 1.5m wide between the river banks and some 0.5m deep [REP4-057]. We consider that this would allow the channel to be temporarily crossed with limited ecological damage. This would allow access for riparian coppicing purposes within the corridor generally below the conductors on the lower half of the northern river diversion cutting slope.
- 6.2.71 It terms of the functionality of the river diversion channel at this conductor crossing, our view is that the deposition of woody material into the watercourse would not be a static event at one particular location. Whilst woody material may not be generated by coppice growth, such material would be carried downstream within the watercourse at various flow rates in the low and wider high flow channels [REP4-057]. It is therefore likely that the river within the conductor crossing corridor would be recharged with woody material from the 950m or thereabouts of unrestricted mitigation planting upstream of the crossing.
- 6.2.72 Floodplain and river bank alders, up to some 16m in height, would also be feasible below the conductors. The SEW Jacobs report shows that such trees at that height are nearing maturity [REP2-140]. Vertical and horizontal structure to the riparian planting corridor along the river diversion would however be affected to some extent by the clearances under the conductors. It is of note however that blocks of lower level vegetation have ecological benefits for dormouse. The constraint here therefore would be that such blocks, which would be beneficial in any event, would have to be provided in specific locations. Furthermore, the proposed development would not prevent future

opportunities to enhance biodiversity along the river diversion corridor²⁶⁷.

- 6.2.73 In coming to our views, we have taken into account the general concerns of the EA in relation to the river diversion. We have considered the detailed evidence put before us and are of the opinion that the presence of the conductors would have little impact on the functionality of the river diversion in terms of mitigation riparian planting between Pylons PC8 and PC9. They would also have little impact on mitigation land planting, for reasons that we have set out previously.
- 6.2.74 **Pylon PC9** would lie between the shoreline of the proposed reservoir and the northern top of the river diversion cutting [REP4-057 and 067]. The cutting would be sufficiently to the south west of the pylon to avoid conflict with the pylon maintenance zone. In our view therefore, the presence of the pylon itself would have a similar but lesser impact on land planting in this area than we have previously described for Pylon PC8.
- 6.2.75 The positioning of the pylon relative to the proposed reservoir shoreline and the top of the cutting would be likely to limit access to this pylon to a corridor to the east [REP4-067]. This would cause some future disturbance to land planting in this area. Use of this access for pylon maintenance would however be infrequent, and the reservoir access road would have to pass within some 130m of this pylon. Furthermore, this area would provide a vantage point for close inspection of the rear face of the reservoir dam, and operational shoreline access may be required in any event. In view of all of these points, we consider that the use of this pylon access would have little impact on mitigation land planting.
- 6.2.76 The location of Pylon PC9 could be seen to restrict any detailed design repositioning of the river diversion and fish pass cutting in this area [REP4-067]. Such movement would however be limited by the outline of the main dam in this area in any event. Moreover, areas within SEW's ownership would be available to the south of the indicative diversion and fish pass route should repositioning be required.
- 6.2.77 The downstream end of the river diversion cutting and the upstream end of the fish pass cutting would be situated below the conductors **between Pylons PC9 and PC10** [REP4-056 and REP4-057]. The EA is particularly concerned about shading of the watercourse in this area, within which fish would be likely to be experiencing high stress levels after negotiating the fish pass [EV-041 to EV-038].
- 6.2.78 Between these pylons, the river bank clearance at SEW Section E-E would be some 22m [REP4-067], at F-F it would be some 18m [REP4-068] and at G-G it would be some 17m [REP4-068]. Furthermore, at

²⁶⁷ EN-1, para 5.3.4

SEW Sections E-E and F-F, the diversion channel would lie to the south of the conductors, thus reducing any impact from clearances on shading. At SEW Section H-H, the clearance to the bottom of the fish pass cutting would be some 21m and at I-I it would be 27m [REP4-069].

- 6.2.79 These effects can be seen on the SEW long section [REP6-056]. The clearances shown on this section are however 2.2m less than would be the case for coppiced woodland, because coppice management can be undertaken at ground level. All of the clearances we have identified above would be greater than those that would be the case between Pylons PC8 and PC9. There is thus nothing to suggest to us that the provision of appropriate watercourse shading would not be possible.
- 6.2.80 Whilst these clearances would be greater than those between Pylons PC8 and PC9, the clearance constraints would exist over a length of some 250m [REP6-056]. As a result of the greater clearances and the more focussed aspects of the riparian planted area in terms of functionality, we are however of the view that the interaction between Pylons PC9 and PC10 would be limited.
- 6.2.81 For land planting, which would be likely to take place to the south of the diversion and fish pass, the top of cutting clearances would be unconstrained at SEW Sections E-E and F-F [REP4-067 and 068], 41m at G-G [REP4-068], 29m at H-H and 23m at I-I [REP4-069]. These locations would be likely to accommodate mature high canopy woodland planting [REP2-140]. Additional unconstrained land would also be available to the south of these locations [REP4-064]. In our opinion therefore, the presence of the conductors would have little effect on the mitigation land planting between Pylons PC9 and PC10.
- 6.2.82 The indicative route of the fish pass would directly conflict with the position of **Pylon PC10**, and therefore the indicative route of the pass would need to be moved away from the pylon [REP4-064 and REP4-069]. We agree with SEW that, if this was to be the case, the risk of ecological disconnection between the pass and the surrounding vegetation would be unacceptable. This is because the pass could have to be located on top of an embankment with an engineered lining to prevent leakage.
- 6.2.83 In coming to our views, we have taken into account the general concerns of the EA in relation to the river diversion. As a result of all of the above points and the detailed evidence put before us, we consider that the installation of the pylons and the associated conductors would have a limited effect on ecology and biodiversity in relation to the 36m AOD river diversion channel and fish pass between Pylons PC8 and PC10, but not including Pylon PC10 itself. At Pylon PC10, the potential conflict identified would represent a substantial risk to the provision of the fish pass and necessary reservoir mitigation and indeed to the provision of the reservoir as a whole. This is a matter to which we will return later in this chapter of the report.

Landscape and visual amenity interactions

- 6.2.84 SEW suggests that landscape mitigation in relation to the reservoir would include a continuous high canopy woodland feature along its southern side. We have already found however that the connectivity of such a feature would need to be broken at various places due to the built environment. We therefore consider that the additional break due to the presence of the conductors between Pylons PC7 and PC8 would not be material in terms of this landscape feature. Furthermore, the orientation and width of this break would not render it visible from many points in the locality.
- 6.2.85 SEW also suggests that the impact of the pylons and conductors on tree heights would affect its ability to screen the reservoir from the surrounding area. The pylon positions to the south of the reservoir would mean that the effect of any reduction in screening tree heights, would only impact on views from the south. The views of concern identified by SEW generally lie to the north of the reservoir, and the proposed development would have no effect on reservoir screening in these views. Views of the reservoir from the south would be more limited due to topography and the number of receptors, and screening to the south of the pylons and conductors would not be constrained by the presence of the overhead line. We therefore believe that the presence of the pylons and conductors would not have a material effect on the future screening of the reservoir. In this regard, we can see no need for the additional photomontages requested by SEW [REP2-099].
- 6.2.86 The proposed pylons and conductors would be visible from many points in the locality. SEW also suggests that the overhead line would affect the enjoyment of recreational users of the water and the area around the reservoir. The Applicant however refers to examples where overhead lines do not appear to adversely affect the amenity use of reservoirs [REP3-017].
- 6.2.87 Whilst enjoyment could be affected to some extent, we do not consider that it would be to a degree that would materially prejudice the delivery of the reservoir proposal or materially affect its socio-economic value. This is because of the interrelationship between the proposed development and the reservoir proposal that we have already described and the limited adverse effect that we have found, together with the examples brought to our attention by the Applicant.
- 6.2.88 The presence of a reservoir in close proximity to the overhead line could increase the future risk of bird collision should the reservoir achieve planning consent and be constructed [REP2-201, REP3-031, REP5-027 and REP7-038]. This is a circumstance that would not exist elsewhere along the route of the proposed development, and it therefore requires consideration on an individual basis. Without the reservoir in place, it is very difficult to conduct a collision risk assessment to determine the likely level of risk [REP4-018 and REP4-028, Q2.2.31]. We consider however that it would be very unlikely

that the increased risk would warrant the future undergrounding of the overhead line, as suggested by SEW. This is because, and we agree with the Applicant that, industry standard mitigation measures, such as diverters and markers, which are recognised as effective by the relevant statutory authorities do not include undergrounding [APP-102 and REP4-018, Section 3]. It is therefore likely that the provision of mitigation measures, if required, to the overhead line would reduce the risk to an acceptable level without the need for undergrounding.

Summary of physical interactions with application design drawings

- 6.2.89 We have considered the installation of the pylons and the associated conductors in accordance with the application design drawings and their effect on the future provision of a river diversion channel and fish pass together with the associated reservoir mitigation for a reservoir top water level of 36m AOD. As a result of all of the above points, we conclude that the adverse effect of the proposed development would be limited between Pylons PC7 and PC10, subject to the provision of bird collision mitigation measures if required in the future. We also conclude that, in terms of physical interactions, the proposed development, between Pylons PC7 and PC10, would accord with EN-1 and EN-5.
- 6.2.90 At Pylon PC10 itself however, we conclude that the potential conflict between the SEW mitigation proposals and the proposed development would represent an unacceptable risk to the provision of the fish pass and necessary reservoir mitigation and indeed to the provision of the reservoir as a whole. This is a matter to which we will return later in this chapter of the report.
- 6.2.91 SEW is of the view that it would be technically feasible to utilise the indicative river diversion route identified for a 36m AOD top water level reservoir for reservoir options with top water levels below 36m AOD [REP4-049, Q2.3.19]. SEW however adds that the greater cost of the 36m AOD route over that for a 32.5m AOD route would make a 32.5m AOD reservoir less economically viable. In our view however, such an impact on the delivery of the reservoir would be limited.
- 6.2.92 SEW suggests that the river diversion would be somewhat removed from the context of the reservoir if the 36m AOD top water level diversion route was used for a 32.5m reservoir [REP4-049, Q2.3.19]. For all the suggested reservoir top water levels however, the diversion would be located in a cutting of some 7m in depth, and its direct relationship with the water surface of the reservoir would therefore not be great in any event. We therefore consider that the movement of this cutting a maximum of some 170m further from the reservoir shoreline, if the 36m route was used for a 32.5m reservoir, would not have any material impact in terms of biodiversity or amenity. Furthermore, there would be an opportunity for additional woodland planting between the diversion cutting and the reservoir shoreline,

which would not be possible with a reservoir having a 36m AOD top water level.

- 6.2.93 On this basis, the finding of limited effect between Pylons PC7 and PC10 is a finding that this indicative 36m AOD route could be used for reservoir top water levels in the range from 32.5 to 36m AOD. We are not saying that the 36m AOD route should be used, but that, in terms of physical interactions, it represents a feasible option on which the presence of the overhead line would have a limited effect. A need for additional flexibility, over the different top water levels and including changes to river diversion channel and fish pass gradients, has been suggested by SEW [REP2-099]. We consider however that sufficient flexibility would exist to accommodate these.
- 6.2.94 Our finding is therefore that the proposal shown on the design drawings in the application, between Pylons PC7 and PC10, would have a limited adverse effect on the proposed reservoir and its mitigation measures for any top water level between 32.5 and 36m AOD.
- 6.2.95 In view of the identified conflict at Pylon PC10 during the Examination, the ExA requested that the Applicant work with SEW to consider the repositioning of this pylon from the location shown on the design drawings [EV-056, Action 1]. We now turn to consider this matter.

Pylon PC10 repositioning

- 6.2.96 The Applicant considered the repositioning of Pylons PC10 and PC8 [REP6-009, Appendix A], and SEW responded to this information [REP7-037]. The Applicant then submitted amended design drawings to reflect various options considered for the repositioning [REP8-021]. The Applicant is content that all of the options are technically feasible and could be delivered without major impediment to the proposed development. The Applicant also considers that any of the options included within the amended design drawings could be incorporated in an Order, if made [REP6-009, Appendix A]. These drawings were agreed by SEW in terms of the factual relationship between the proposed development and the proposed reservoir, river diversion and fish pass [REP9-003].
- 6.2.97 The ExA did not ask the Applicant to consider the repositioning of Pylon PC8, and this matter will be addressed later in this chapter.
- 6.2.98 The Applicant's repositioning of Pylon PC10 related to its position shown on the design drawings. The rDCO however requires the authorised development to be carried out in general accordance with the design drawings. This would give pylons which would not involve changes of route direction, such as Pylon PC10, flexibility in terms of positioning along the line of the route [REP2-017, Appendix G and REP5-022].
- 6.2.99 The greatest repositioning of Pylon PC10 suggested by the Applicant would be 80m towards Pylon PC11. This movement would take place

within a total distance between Pylons PC9 and PC11 of some 700m. There would be no changes to the route of the overhead line shown on the design drawings. We consider that this pylon repositioning would remain in general accordance with the design drawings, and the repositioning could thus have taken place in any event. The repositioning of Pylon PC10 from the position shown on the design drawings, and the securing of the pylon in the repositioned location through say protective provisions, would therefore represent a restriction on the powers sought by the application, rather than an alternative to the application.

- 6.2.100 The flexibility in terms of the positioning of pylons along the line of the route is reflected in the ES submitted with the application in terms of the Rochdale Envelope considered for the proposed development [APP-029 and 030]. None of the Applicant's options for the repositioning of Pylon PC10 would exceed the impacts assessed and set out in the application ES [REP7-009].
- 6.2.101 Of the repositioning options submitted by the Applicant for PC10 alone, only Options 6B and 7B would result in the indicative fish pass cutting being outside of, or not adjacent to, the pylon itself [REP6-009, Appendix A]. Option 6B would result in part of the fish pass cutting lying adjacent to the pylon foundation exclusion zone [REP6-009, Appendix A, Drawing 0587].
- 6.2.102 In engineering and ground profile terms, we are satisfied that this Option 6B conflict could be overcome by the localised steepening of the fish pass cutting.
- 6.2.103 We have however already found that this area is critical in terms of the successful operation of the fish pass and that, over the length of the river diversion and fish pass, this is the area where maximum route flexibility could be required. Furthermore, Pylon PC8 would be some 60m from the indicative route of the river diversion channel [REP4-064], whereas under Option 6B, Pylon PC10 would be some 30m from the indicative route of the fish pass [REP6-009, Appendix A, Drawing 0587]. This, coupled with the need for flexibility in the design of the fish pass, leads us to the opinion that Pylon PC10 under Option 6B would still represent an unacceptable risk in terms of the future provision of a suitable fish pass. Under Option 7B, Pylon PC10 would be some 50m from the indicative route of the fish pass [REP6-009, Appendix A, Drawing 0588]. Moreover, a separation of some 30m would exist between the top of the fish pass cutting and the pylon foundation exclusion zone.
- 6.2.104 We consider that this would be an acceptable separation as it would afford the maximum flexibility within the land that SEW has purchased for the reservoir. It is also of note that SEW considers that a need for additional land acquisition beyond its existing holding would significantly increase the risks of reservoir delivery, because of the potential need for compulsory purchase [REP5-040]. It therefore appears to us to be very unlikely that the fish pass cutting would be

positioned closer to an Option 7B Pylon PC10 position than would be possible within the existing SEW land holding. The minimum separation of some 30m, as described above, would thus be likely to remain the case. All of this therefore leaves Option 7B to be further considered.

- 6.2.105 Under Option 7B, Pylon PC10 would be repositioned some 80m to the east of the position shown on the design drawings submitted with the application. The increased span between Pylons PC9 and PC10 would result in greater sag of the conductors between the pylons. To generally maintain the previously identified clearances over the river diversion and fish pass, it would be necessary to raise Pylons PC9 and PC10. The construction of these pylons comprises sections which are 3.7m in height. Pylons PC9 and PC10 would therefore be raised by 3.7m. This would again lie within the LoD and Rochdale Envelope as previously described.
- 6.2.106 The potential for increased sag and the raising of Pylons PC9 and PC10 would result in changes to the clearances over the river diversion and fish pass cutting that would have resulted from the design drawings submitted with the application between Pylons PC9 and PC10 [REP7-035]. At SEW Section E-E, the river bank clearance would increase from 22 to 28m. The minimum clearance at this section, above the top of the northern slope of the river diversion cutting, would increase from 13m to 15m. At SEW Section F-F, the river bank clearance would remain at 18m. The minimum clearance at this section, above the upper half of the northern slope of the river diversion cutting, would remain at 15m. At SEW Section G-G, the river bank clearance would reduce from 17 to 16m. The minimum clearance at this section, above the access berm, would decrease to 14m. At SEW Section H-H, the fish pass clearance, which would have been the minimum clearance at this section would reduce from 21 to 17m. At SEW Section I-I, the fish pass clearance would reduce from 27 to 22m. The minimum clearance at this section, at the top of the southern slope of the fish pass cutting, would decrease from 23m to 18m.
- 6.2.107 In terms of the river bank and fish pass therefore, there would be an improvement over the design drawings at Section E-E, no material change at Section F-F and a reduction in clearances at Sections G-G, H-H and I-I. These reductions however would not take clearances to less than those resulting from the application design drawings elsewhere along the river diversion route, which we have found to be acceptable in terms of watercourse shading and the provision of a wildlife corridor. In terms of watercourse shading and the heights of vegetation required to achieve this, we can see no reason to suggest that the vegetation heights for the fish pass should be any different from those on the river diversion channel. Indeed, the provision of shading for the fish pass would not be interrupted by the access berm, as would be the case for the river channel. We therefore consider that under option 7B the reduced clearances under the conductors between Pylons PC9 and PC10 would have a limited adverse effect on the future provision and operation of the river diversion and fish pass.

- 6.2.108 The raising of Pylon PC9 by 3.7m would also increase clearances over the river diversion cutting between Pylons PC8 and PC9. Whilst a longitudinal section has been provided [REP8-021], detailed clearance increases to the river diversion cutting have not however been provided for this section.
- 6.2.109 In a similar manner, the raising of Pylon PC10 by 3.7m would also increase clearances between Pylons PC10 and PC11. Whilst this span lies outside the area of the reservoir, it is the case that revised design drawings have not been provided for this span. Prior to certifying the design drawings, the SoS should request and then certify a replacement long section for the conductors between Pylons PC10 and PC11, and this would require a consequent amendment to rDCO Schedule 2 Part 3.
- 6.2.110 Option 7B would also result in a further reduction in impact from that suggested from the final Examination design drawings [REP7-024] in that existing trees within Group G100 could be retained and managed [REP9-001, Appendix 1]. This would be in the area of the original position for Pylon PC10 shown on the design drawings.
- 6.2.111 From all of the above matters, we consider that Option 7B for the repositioning of Pylon PC10 from its location shown on the design drawings would satisfactorily mitigate²⁶⁸ the conflict that we had identified in terms of the application design drawing location for Pylon PC10 and the indicative route of the fish pass. In this regard, the design has evolved during the Examination and has taken into account the potential preclusion of new development and the need for good design to minimise impact on planned uses of land²⁶⁹. Under Option 7B therefore, based on the evidence before us, we consider that the presence of Pylon PC10 would have no material effect on the provision of the fish pass. In this regard, the presence of Pylon PC10 would also accord with EN-1 and EN-5. Whilst there would be some reduction in the conductor clearances over the river diversion and fish pass previously identified between Pylons PC9 and PC10, this would not be sufficient to change our previous finding of limited adverse effect. We are therefore recommending that Option 7B is used instead of the application design drawings and the Applicant's final draft DCO [REP7-003] is amended to reflect this.
- 6.2.112 The EA has submitted representations at various stages during the Examination and has attended ISHs concerning the reservoir proposal. The EA's final Examination position is that it believes that the proposed development would prevent the necessary mitigation required for the reservoir under the WFD and therefore would cause non-compliance with the Directive [REP8-013]. The EA's position is based on the application design drawings and, in view of their conflict

²⁶⁸ EN-1, para 1.7.2, 1.7.11 and 4.2.4

²⁶⁹ EN-1, para 4.5.2, 4.5.4, 5.10.5 and 5.10.19

between Pylon PC10 and the fish pass, this is a position with which we agree.

- 6.2.113 The EA strongly advises the Applicant and SEW to explore a solution which would enable the successful completion of both schemes. It has not however been possible for the Applicant and SEW to reach agreement on this during the Examination.
- 6.2.114 The EA also advises that SEW could potentially rely on a defence under Article 4.7 of the Directive, given the public interest in the provision of drinking water supply, and that this is a matter to be considered when a planning application for the reservoir proposal was made.
- 6.2.115 At the end of the Examination, we have found that the proposed development would have a limited effect on the reservoir proposal with a re-positioned Pylon PC10. We therefore consider that, with Pylon PC10 re-positioned, appropriate provisions to secure the location of Pylon PC10 and the potential to rely on Article 4.7 of the Directive, that the EA's SoCG position is not sufficient reason to withhold consent for the proposal development.

Other matters

Applicant Pylon PC8 repositioning

- 6.2.116 The Applicant has also suggested that the original position of Pylon PC8 on the design drawings could be moved 17m in a south easterly direction, away from the top of the river diversion channel cutting [REP8-017]. Whilst this would introduce some further separation between the pylon and the cutting, we have not found the position of the pylon on the final Examination design drawings [REP7-024] to be unacceptable.
- 6.2.117 The suggested repositioning of this pylon is also accompanied by its raising by 3.7m. This would further increase the clearances over the river diversion cutting between Pylons PC8 and PC9. Again though, we have already found the clearances resulting from the application design drawings to be acceptable.
- 6.2.118 The repositioning and raising of the pylon however would increase the visual impact on receptors to the south of the pylon. This is a particular concern of the Broad Oak Preservation Society [REP8-029]. The Applicant has shown that these would not be significant [REP9-001, Appendix 1]. They would still however represent increases, in terms of increased height and repositioning towards receptors, over what is shown in the application design drawings. This though would not exceed that which has been assessed in the ES. Indeed, the proximity of the overhead line route to the Broad Oak settlement had already prompted the Applicant to reduce horizontal LoD in this area to provide protection to sensitive receptors [REP2-017, Appendix G]. When these increased impacts are set against the limited benefits of

repositioning the pylon, we do not consider that an adequate case has been made in support of the repositioning and raising of Pylon PC8.

SEW alternatives

- 6.2.119 SEW, as part of its objection to the proposed development, has suggested three alternatives that would relocate the proposed development to the south of its current route and avoid or reduce interaction with the reservoir proposal [REP2-099 and 183]. This chapter addresses these three alternatives to the proposed development that have been suggested by SEW, on the basis that these are directly related to the reservoir proposal. Other alternatives, including those which arose prior to the submission of the application for the proposed development, are identified in Chapter 4 and considered there, where appropriate. Chapter 4 includes directions to other areas of our report where alternatives are considered as a consequence of the application. Alternatives in respect of matters in relation to compulsory acquisition are considered in Chapter 9.
- 6.2.120 Under s104(2)(d) of PA2008, and in accordance with EN-1, the Secretary of State must consider whether these alternatives are material to the decision on the application in terms of their importance and relevance, including whether their relevance is a matter of law²⁷⁰.
- 6.2.121 There is no general policy requirement in the relevant NPSs to consider alternatives or to establish whether the proposed project represents the best option²⁷¹. However, if an application gives rise to adverse impacts, alternatives put forward by other IPs could be important and relevant considerations, resulting in a requirement to consider them as a matter of law.
- 6.2.122 The alternatives suggested by SEW are as follows. Alternative A comprises overhead lines following a route to the south of that proposed in the application [REP2-229 and 230]. SEW is of the view that this would significantly reduce direct impacts, although bird collision risk and impacts on visual and recreational amenity would remain. This route would pass closer to the settlement of Broad Oak, but SEW considers that its statutory water supply obligation would outweigh any increased effects on Broad Oak. A landscape and visual assessment would probably be required [REP2-225]. SEW makes the point that, even with this alternative, it would still be faced with an additional cost of £4.27m in terms of increased costs associated with the reservoir.
- 6.2.123 Alternative B comprises the removal of Pylons PC7 to PC11, and their replacement with underground cables placed in trenches [REP2-231 and 232]. This alternative, in SEW's view, would substantially reduce all impacts, and a landowner, through whose land the cables would

²⁷⁰ EN-1, para 4.4.1 and 4.4.3

²⁷¹ EN-1, para 4.4.1

pass, has no objection [REP2-232]. SEW consider that this alternative would result in an additional cost to the Applicant of £15.7m in terms of increased costs associated with the underground cables.

- 6.2.124 Alternative C similarly comprises the removal of Pylons PC7 to PC11, and their replacement with underground cables placed within ducts. These ducts would be installed by horizontal directional drilling at a depth of 10m underground [REP2-228]. SEW considers that this alternative would also significantly reduce all impacts, and planting would be possible over the cables. SEW prefers this option. SEW considers that this alternative would result in an additional cost to the Applicant of £18.4m in terms of increased costs associated with the underground cables.
- 6.2.125 SEW considers that the impact of the proposed development on the construction cost of the reservoir would be between £8.4m for a 36m and 10.5m for a 32.5m AOD reservoir. These SEW costs would be saved under each of the alternatives. The costs relate to extended construction times in the areas of the pylons and conductors, the use of smaller plant, double handling, health and safety matters and soil reinforcement. SEW considers that these additional costs would make the reservoir unviable. It also points out that costs to the Applicant would be spread over a wider cost base in terms of consumers served.
- 6.2.126 All these alternatives would lie outside of the Order land [REP2-226, REP2-227 and REP2-228] and additional compulsory acquisition would be required, which SEW suggested would lead to a short Examination delay of some 8 weeks [EV-027 to 030].
- 6.2.127 SEW suggested that the Applicant makes an application for changes to the application DCO together with a minimal extension to the Examination. In response, the Applicant confirmed that it did not wish to make any changes to the submitted DCO or seek any extension to the examination timeframe [REP3-017]. The Applicant has also responded in detail to these suggested alternatives [REP3-019].
- 6.2.128 SEW considers that the ExA needs to see additional photomontages representing views from the receptors to the north of the land that would accommodate the reservoir proposal and that show the three SEW alternatives [REP2-099, REP2-223 and REP2-224]. The Applicant does not consider there to be any justification for such photomontages which relate to the alternatives and argues that this is consistent with the approach taken in the ES where they have not been prepared for alternatives considered by the Applicant [REP4-014, Q2.7.9].
- 6.2.129 The adverse effects of the proposed development on the reservoir proposal have been rationally assessed in detail during the Examination. The ExA concludes that the limited degree of adverse effects on the proposed reservoir resulting from this assessment and

other effects does not result in a need to consider the SEW alternatives or prepare any additional photomontages. This is because their importance and relevance to the decision is limited²⁷² and, in this case, there is no evidence of any express requirement to consider these alternatives. Furthermore, the limited degree of adverse effect renders the proposed development as generally compatible with the reservoir proposal. There are also no reasons in relation to biodiversity interests or landscape and visual effects that would justify the consideration of any of the SEW alternatives, and it is of note that no other ES Tier 3 proposals have been included in photomontages²⁷³.

- 6.2.130 There are some social and environmental benefits from the proposal for an underground cable. The Applicant has agreed that undergrounding is feasible, but there are additional costs involved [REP2-222]. The limited benefit of undergrounding in this area, due to the limited adverse effects it would overcome, would not clearly outweigh the impact of these additional costs²⁷⁴ as set out above.
- 6.2.131 In terms of Holford Rule 7, we have found that the level of impact of the proposed development on the future recreational use of the reservoir and its surrounding area would be limited²⁷⁵. We do not consider that this level of impact is sufficient to trigger a need for a more detailed assessment of the comparative cost of undergrounding. Furthermore, undergrounding has not been shown in any way to be necessary to secure the reservoir and we are not convinced that the benefits from undergrounding would clearly outweigh the economic impacts²⁷⁶. Certain types of planting could also be restricted over underground lines.
- 6.2.132 SEW has also suggested that its alternatives should be considered because a relatively small adjustment could eliminate the prejudice it says would be imposed on it. The degree of adjustment involved in these alternatives is not however relatively small for the following reasons. The alternative overhead route would need to be optimised between any impact on the reservoir proposal and any impact on receptors to the south. This area has already been found to be sensitive, resulting in the reduction in LoD to protect receptors to the south of the application route. In terms of undergrounding, both of these options would require the use of technologies not currently employed elsewhere within the application with consequent additional costs. These matters do not support the consideration of these alternatives and the potential for additional construction disruption.

²⁷² EN-1, para 4.4.1 and 4.4.3

²⁷³ EN-1, para 5.3.7 and 5.9.10 and EN-5, para 2.2.1

²⁷⁴ EN-5, para 2.8.9

²⁷⁵ EN-5, para 2.8.5 to 2.8.7

²⁷⁶ EN-5, para 2.8.9

General other matters

- 6.2.133 Under Schedule 9 of the Electricity Act 1989, we are satisfied that the Applicant has had regard to the conservation of flora, fauna and geological and physiographical features of special interest. Moreover, in the repositioning of Pylon PC10, the Applicant has done what it reasonably can in the context of a conflict identified in detail during the Examination. We are therefore satisfied that the Applicant has complied with the Act and do not consider that it supports the consideration of the suggested alternatives in this regard.
- 6.2.134 The Canterbury City Local Plan and the emerging plan support the aims of the WFD and WRMP14. We have not found that the proposed development would be incompatible with either of these documents. There is thus no evidence in relation to these plans that supports the further consideration of the suggested alternatives. Furthermore, neither the Local Plan²⁷⁷ nor the emerging Draft Local Plan²⁷⁸ safeguard the land required for the reservoir [REP8-014]. In a similar manner and in view of the limited impacts, we can see no justification in the National Planning Policy Framework or National Planning Practice Guidance for the consideration of the suggested alternatives.
- 6.2.135 In view of the above points and the limited impacts that we have found, we do not consider that it is necessary to further consider the planning merits of the alternatives in the context of the proposed development.

EXAMINING AUTHORITY CONCLUSION ON PHYSICAL INTERACTION

- 6.2.136 We accept the evidence put forward concerning:
- the need for the reservoir;
 - its status as an identified proposal in WRMP14; and
 - the fact that it represents a lower carbon option than other potential water supply solutions²⁷⁹.
- 6.2.137 It is however of note that the detailed design of the reservoir proposal is at an early stage, and SEW has not secured a planning consent for the reservoir and its mitigation. Furthermore, whilst reference is made to it, the reservoir proposal is not allocated or safeguarded within the adopted Local Plan²⁸⁰ or the emerging draft Local Plan²⁸¹. We have therefore given the status of the reservoir proposal moderate weight.
- 6.2.138 Notwithstanding the stage at which the reservoir proposal is at and the moderate weight we have given to its status, we consider that it

²⁷⁷ Canterbury District Local Plan 2006 (2009)

²⁷⁸ Draft Canterbury Local Plan Amendments (November 2015) and Potential Main Modifications (28 April 2016)

²⁷⁹ EN-1, para 1.7.2, 4.1.3 and 5.3.6

²⁸⁰ Canterbury District Local Plan 2006 (2009)

²⁸¹ Draft Canterbury Local Plan Amendments (November 2015) and Potential Main Modifications (28 April 2016)

has been necessary for us to assess whether the proposed development would preclude any reservoir proposals which may come forward at some future time. This is on the basis of the need case presented to us and SEW's intentions in terms of satisfying this need set out in WRMP14.

- 6.2.139 We have found that the proposed development would have a limited adverse effect on the reservoir proposal and its mitigation measures for any top water level between 32.5 and 36m AOD. This finding is based on the indicative 36m AOD river diversion and fish pass route provided by SEW. There is however nothing to suggest to us that this route would not be a feasible option in relation to the reservoir proposal for any top water level between 32.5 and 36m AOD.
- 6.2.140 We therefore conclude that it would be possible to provide the reservoir proposal and its mitigation with the proposed development in place. This conclusion is based on the proposal shown on the design drawings in the application between Pylons PC7 and PC8 and the design drawing for Option 7B in relation to the repositioning of Pylon PC10. Should the Secretary of State agree with this conclusion, the replacement design drawing for Option 7B to be certified should be extended to Pylon PC11, as previously identified.
- 6.2.141 Having reached this conclusion on physical interaction, we now turn to how relevant matters relating to the pylons and conductors could be secured, in order to ensure that the outcomes set out in this chapter can be achieved.

6.3 PROTECTIVE PROVISIONS

INTRODUCTION

- 6.3.1 Protective provisions were discussed at the third DCO ISH on 10 November 2016. The Applicant's summary of case on provisions was put forward at the ISH [REP7-009]. The Applicant made further submissions on this matter as follows: final provisions [REP7-003]; post-ISH position statement on provisions [REP7-008]; and final position statement on provisions [REP8-018].
- 6.3.2 SEW's summary of case on provisions was put forward at the ISH [REP7-029]. SEW made further submissions on this matter as follows: final provisions including an explanation of non-agreed wording [REP7-036 and 039]; response to REP7-008 [REP8-023]. The SEW position was given on a without prejudice basis, as it does not accept that the proposed development and the reservoir proposal could co-exist [REP6-038]. Furthermore, SEW contends that there is no proper reason why SEW has to accept that the two projects could co-exist in order for that exercise on the provisions to be undertaken. The EA, CCC and KCC wish to see the Applicant and SEW continue to work together to seek a solution to avoid unnecessary conflict between the proposed development and the reservoir proposal [REP8-013 and REP8-014].

- 6.3.3 The protective provisions constrain both the extent of the works and the compulsory acquisition provisions within the Applicant's final draft DCO. Our conclusions below are taken to Chapter 10 of this report where they are incorporated in the rDCO.

APPLICANT'S PROTECTIVE PROVISIONS AND SOUTH EAST WATER'S RESPONSE

- 6.3.4 The numbering of these provisions is that given in the Applicant's final draft DCO [REP7-003].

Provision 54

- 6.3.5 This provision provides interpretation for terms used in the following provisions and is agreed between the parties.

Provision 55

- 6.3.6 This provision would require 30 days' notice prior to entry onto SEW's land, with such entry being in accordance with SEW's reasonable requirements. SEW wishes to add that, in the absence of agreement on reasonable requirements in three months, the rDCO arbitration procedure is engaged. This is on the basis that the Applicant's provision would be unreasonable and offer no protection at all. SEW also wishes to add that the requirements should ensure that SEW is not inhibited from implementing the reservoir proposal. The Applicant considers that these additions would be unjustified, unreasonable and without precedent and could significantly delay or undermine the proposed development.

Provision 56

- 6.3.7 This provision would prevent rDCO powers being exercised on SEW's land in a manner where they would prevent SEW from implementing the reservoir proposal. This would be the case except where the exercise of the powers was required to protect the integrity and safe and efficient operation of the proposed development or for the protection of the undertaker's statutory undertaking, including for reasons of health and safety. SEW does not accept these exceptions and wishes to substitute the word 'inhibit' for 'prevent' and to incorporate an arbitration procedure in the provision.

Provision 57

- 6.3.8 This provision covers matters relating to future vegetation management in the vicinity of the proposed development and is agreed between the parties.

Provision 58

- 6.3.9 This provision effectively limits the downwards LoD on SEW's land to 50cm below the conductor levels shown on the Applicant's design drawings and is agreed between the parties.

Provision 59

- 6.3.10 This provision effectively limits the horizontal LoD for Pylons PC8 to PC10 to a tolerance of 5m, subject to the reasonable endeavours of the undertaker. SEW wishes to make this an absolute tolerance, but with the opportunity to agree a variation in writing between the parties.

Provision 60

- 6.3.11 This provision addresses the potential installation of bird flight diverters between Pylons PC7 and PC10, if required by any planning permission or statutory consent for the proposed reservoir. It is agreed between the parties that a potential risk could exist if the reservoir proposal was implemented [REP5-009]. The only disputed matter in relation to this provision is which party bears the cost of installing diverters, if required.

Provision 61

- 6.3.12 This provision would require the undertaker, on request, to inform SEW of planned conductor outages, giving SEW as much notice as reasonably practicable. The intention is that this notice would enable SEW to take advantage of outages to carry out work in the vicinity of the conductors without the need to maintain safety clearances. SEW wishes to add that outages can be requested by SEW, and implemented by the undertaker, if at all possible in relation to the construction of the proposed reservoir.

SOUTH EAST WATER'S PROTECTIVE PROVISION AND APPLICANT'S RESPONSE

- 6.3.13 The following provision was suggested by SEW and rejected by the Applicant. The numbering of this provision is taken from the SEW DL7 submission [REP7-036].

South East Water's Provision 61

- 6.3.14 This provision would require SEW's approval for any landscaping and mitigation planting works on land owned by SEW before its implementation. The Applicant considers that, as the planting would have to be approved by the relevant planning authority, it would not be appropriate or indeed possible for it to be subject to SEW approval [REP7-008]. The Applicant adds that no element of the mitigation proposed within its draft DCO would conflict with the reservoir proposal, and that SEW had previously agreed this matter [REP4-014].

EXAMINING AUTHORITY'S CONSIDERATION OF PROTECTIVE PROVISIONS

- 6.3.15 This section of the chapter addresses the Applicant's provisions first and then turns to those suggested by SEW. The ExA's findings in this chapter are incorporated in the rDCO in Chapter 10 of this report.

Provision 54

- 6.3.16 We consider that the wording of the provision, which has been agreed between the parties, would be appropriate. In order to retain consistency with Protective Provision 58, after 'drawings' delete 'and in more detail on plan []'. This is therefore included in the rDCO.

Provision 55

- 6.3.17 We are satisfied that the 30 days' notice period would give adequate time for requirements to be formally and fully considered on both sides. The provision would be secured under Article 42 of the rDCO, and any difference under any provision of the Order would be subject to the arbitration mechanism set out in Article 49. Should the requirements in the provision be disputed, the arbitration mechanism could be engaged in any event, and its duplication in this protective provision would therefore be unnecessary. If the undertaker entered the land before the arbitrator had concluded on any dispute, and without complying with any SEW requirements, there would be a risk that the Applicant would be entering the land in breach of the Order and enforcement action could be taken.
- 6.3.18 The exercise of any powers that would prevent SEW from implementing the reservoir proposal would be limited by the Applicant's Provision 56. We consider that the duplication of any restriction not to prevent or inhibit the implementation of the reservoir proposal would be unnecessary.
- 6.3.19 In view of the above points, we consider the Applicant's wording to be appropriate. This is therefore included in the rDCO.

Provision 56

- 6.3.20 The Applicant's provision includes that SEW could be prevented from implementing the reservoir proposal where it was necessary to protect the integrity and safe operation of the proposed development. We have already found that the proposed development would have a limited effect on the implementation of the reservoir proposal. It is therefore our position, and we agree with the Applicant, that the implementation of the reservoir proposal would not be likely to affect the integrity of the proposed development or its safe operation. In the event of unforeseen circumstances however, we consider that the protection of its integrity and safe operation by the Applicant's wording in this provision would be appropriate and proportionate. We have come to this view in the context of the interaction between the reservoir and the proposed development, the importance of the proposed development to the strategic electricity transmission network and the importance of safety.
- 6.3.21 The Applicant's provision however also includes that the efficient operation of the proposed development and the protection of the undertaker's statutory undertaking should be excluded from the prevention of powers that would be sought by this provision. Both of

these matters are wide ranging. We have found, on physical interaction, that the proposed development and the reservoir proposal would have interactions that could affect the efficient operation and the statutory undertaking of each party. We have also found however that these could be subject to a reasonable planning balance sought by legislation and policy. The inclusion of efficiency and the protection of the undertaker's general statutory undertaking in this provision would thus conflict with the basis of our recommendation. The Applicant's wording should be amended accordingly by the deletion of these two terms. The Applicant's term relating to the statutory undertaking includes reference to reasons of health and safety. We consider that this reference can also be deleted, on the basis that they would duplicate the safe operation exception that we have already found to be appropriate and should be retained.

6.3.22 We now turn to consider whether this provision should include a reference to 'prevent' or 'inhibit' implementation of the reservoir proposal. We consider that 'to prevent' is a higher threshold than 'to inhibit'. We have already found that the proposed development would have a limited adverse effect on the implementation of the reservoir proposal.

6.3.23 The use of the term 'inhibit' could therefore result in circumstances that caused a limited adverse effect, that would be acceptable under our finding on physical effects, not being permissible under the SEW provision. The use of the term 'inhibit' in this provision would thus be inconsistent with our finding on physical effects, and we agree with the Applicant's use of the term 'prevent' in this regard.

6.3.24 We have already found that the duplication of an arbitration mechanism would be unnecessary.

6.3.25 From all of the above, we consider that references to efficient operation and the undertaker's statutory undertaking including reasons of health and safety should be deleted from the Applicant's wording for this provision.

6.3.26 The following amendments should therefore be made to the Applicant's final draft DCO. After 'safe' delete 'and efficient', and after 'development' delete 'or for the protection of the undertaker's statutory undertaking, including for reasons of health and safety'. This is therefore included in the rDCO.

Provision 57

6.3.27 We are content with the wording of this provision.

Provision 58

6.3.28 We are content with the wording of this provision, apart from in respect of our finding that certain design drawings referred to in the Applicant's final draft DCO should be replaced. We consider that the Applicant's reference to the amended drawings as showing conductor

levels in more detail is not correct, as the level of detail on the application and amended drawings is the same. The conductor positions however are not the same.

- 6.3.29 It would thus be necessary to clearly identify the conductor positions over the SEW land on which we have based our assessment. The replacement with amended drawings should therefore take place, and the reference in the provision to drawings showing more detail should be deleted.
- 6.3.30 The following amendment should therefore be made to the Applicant's final draft DCO. After 'drawings' delete 'and in more detail on plan []'. This is therefore included in the rDCO.

Provision 59

- 6.3.31 Our findings in relation to the effect of the proposed development on the reservoir mitigation measures are based on a detailed assessment of the impact of a design drawing scheme, with fixed pylon positions, on potential reservoir options. The design drawing scheme was put forward and adjusted by the Applicant in relation to Pylon PC10.
- 6.3.32 Whilst some flexibility would be required in terms of pylon locations, and indeed has been acknowledged by SEW, the use of the term 'all reasonable endeavours' could undermine our findings. We therefore consider that the Applicant's wording should be amended to delete reference to this term. We accept that some flexibility, agreed between the parties, should be possible beyond the tolerance of 5m. We thus consider that the SEW wording, to make this an absolute tolerance but with the opportunity to agree a variation, should be introduced into the provision.
- 6.3.33 We also consider that it would be necessary to clearly identify the relevant pylon positions over the SEW land on which we have based our assessment, for the same reasons as given for Provision 58. The replacement with amended drawings should therefore take place, and the reference in the provision to drawings showing more detail should be deleted.
- 6.3.34 The following amendments should therefore be made to the Applicant's final draft DCO. After 'deviation,' delete 'National Grid shall use all reasonable endeavours to ensure that', and after 'drawings' replace 'and in more detail on plan []' with 'unless otherwise agreed in writing with SEW'. This is therefore included in the rDCO.

Provision 60

- 6.3.35 Our findings in relation to physical interactions conclude that there would be effects on both parties' activities due to the proximity of the proposed reservoir to the proposed development. Additional cost would also be likely to be incurred by each party in this regard. The Applicant's protocol for the installation of bird flight diverters [REP6-016, Appendix D] does not suggest that the cost of installation and

maintenance should be imposed on a third party following development outside of the overhead line maintenance zones. It is however the case that larger developments, such as the reservoir, could have to secure mitigation measures in order to gain consent, and the agreed elements of the provision are written in this context. EN-5 advises that assurances should be sought to ensure that bird collision mitigation measures will be taken where necessary, and there is no suggestion that the funding of mitigation measures should be the responsibility of third parties.

6.3.36 Here, on balance, we consider that the undertaker should be responsible for the installation and maintenance costs, if diverters are required. This is on the basis that a potential risk and potential need for mitigation has already been identified, and agreed, even though it is not agreed that the risk can currently be quantified. Moreover, the wording of the provision is proportionate, in that it would delay a decision on diverters until a better judgement on the quantum of the risk and the need for diverters can be made by others.

6.3.37 The following amendment should therefore be made to the Applicant's final draft DCO. After 'at' replace '[its own cost][the cost of SEW]' with 'its own cost'. This is therefore included in the rDCO.

Provision 61

6.3.38 The proposed development would be a strategic pan-European link in the UK's power distribution network. The findings in this chapter have been based on this need and benefit and with the conductors energised whenever possible. The isolation arrangements suggested by SEW, notwithstanding the use of the words 'if at all possible' could undermine the resilience of this power link. Furthermore, they have not been found to be necessary for construction of the reservoir. We therefore consider that the Applicant's wording is appropriate.

South East Water's Provision 61

6.3.39 Canterbury City Council (CCC) wishes to ensure that there is no unacceptable conflict between the proposed development and the reservoir proposal [REP8-014]. The approval power in the rDCO gives CCC the ability to follow this wish through in a balanced manner [REP7-003]. Furthermore, the Applicant's Concept Mitigation Plan is not a final scheme and there is nothing that suggests to us that mitigation for the proposed development would necessarily conflict with the reservoir proposal. We therefore consider that this provision would not be necessary.

EXAMINING AUTHORITY'S CONCLUSION ON PROTECTIVE PROVISIONS

6.3.40 The ExA concludes that the Applicant's protective provisions, as amended above, would be likely to secure a final design for, and the operation of, the proposed development that would replicate the outcomes on physical interaction set out earlier in this chapter. These

outcomes, and our consequent finding of limited adverse effect, were based on the design drawings and therefore dependent on restricting some of the locational and access flexibility generally afforded by the rDCO. We are satisfied that our conclusions on the protective provisions would provide the necessary security in relation to our finding of limited effect. We are also of the opinion that our recommended protective provisions would provide a framework within which the Applicant and SEW would have the opportunity to adopt the joint approach as sought by the EA, CCC and KCC.

6.4 OVERALL CONCLUSION

- 6.4.1 In view of the stage at which the reservoir proposal is at, we have given moderate weight to its status as a future proposal. We have found that, in terms of physical interaction and the design drawings, the proposed development would have a limited effect on the reservoir proposal. We have also found that it would be possible to provide the reservoir proposal and its mitigation with the proposed development in place. Furthermore, we have found that the incorporation of protective provisions in the rDCO would secure these findings and seek to ensure that the Applicant and SEW adopt a joint approach to matters in the area of the reservoir proposal . There is also nothing to suggest, in terms of the specific issues dealt with in this chapter, that the proposed development would be in conflict with the relevant, EN-1 or EN-5.
- 6.4.2 In view of our finding of limited effect, we consider that the three alternatives suggested by SEW are not sufficiently important or relevant to the decision on this application to be matters to which the Secretary of State should have regard²⁸². Furthermore, there is nothing else to suggest that they should have been considered any further²⁸³.
- 6.4.3 The ExA therefore concludes that, with the suggested amendments set out in this chapter in relation to the repositioning of Pylon PC10 on the design drawings and the incorporation of the suggested protective provisions, there is nothing in the SEW objection or any other associated representation to suggest that the application should be refused²⁸⁴.
- 6.4.4 It would however be necessary, in accordance with our finding in relation to the repositioning of Pylon PC10, to substitute the Applicant's Option 7B design drawing, National Grid Drawing Ref PDD-21497-2-OHL-0434 Version B [REP8-021, Sheet 4L of 21] for that submitted with the application, National Grid Drawing Ref PDD-21497-2-OHL-0403 Version B [APP-026, Sheet 4 of 21]. This substitution has been made in Schedule 2 Part 3 of the rDCO. It is of note that the

²⁸² EN-1, para 4.4.3

²⁸³ EN-1, para 4.4.1

²⁸⁴ EN-5, para 2.2.1

design drawings were resubmitted during the Examination, but application Drawing 0403 remained as Version B at the close of the Examination.

- 6.4.5 The position and height of Pylon PC10 is repeated on the application design drawing National Grid Drawing Ref PDD-21497-2-OHL-0404 Version B [APP-026, Sheet 5 of 21]. For consistency, we therefore recommend that, if the Secretary of State decides that an Order should be made, the Applicant should provide an update of this design drawing and Schedule 2 Part 3 of the rDCO should be amended to reflect the updated drawing before any Order is made. It is again of note that, notwithstanding resubmissions, application Drawing 0404 remained as Version B at the close of the Examination.
- 6.4.6 The application position and height of Pylon PC10 and the height of Pylon PC9 are also recorded on application design drawing National Grid Drawing Ref PDD-21497-2-OHL-0421 Version A [APP-026, Sheet 21 of 21]. Again, for consistency, we recommend that, if the Secretary of State decides that an Order should be made, the Applicant should provide an update of this design drawing to record the amended position and height of Pylon PC10 and the amended height of Pylon PC9. The amended details should be as shown for Option 7B on National Grid Drawing Ref PDD-21497-2-OHL-0422 [REP8-021, Sheet 21A of 21]. Schedule 2 Part 3 of the rDCO should also be amended accordingly before any Order is made. It is again of note that, notwithstanding resubmissions, application Drawing 0421 remained as Version A at the close of the Examination.
- 6.4.7 We have agreed that additional protective provisions are introduced into the application DCO to regulate the positioning of elements of the proposed development in the area of the reservoir proposal. This regulation does not constitute any work outside of that included in, or assessed as part of, the application. The ExA does not therefore consider that the introduction of these provisions represents any change to the application that would affect the Secretary of State's power to make a DCO.

7 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

7.1 INTRODUCTION, POLICY AND LEGISLATIVE CONTEXT

- 7.1.1 This chapter of our report sets out the analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive') and the Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC) ('the Birds Directive'), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations').
- 7.1.2 The evidence presented during the Examination concerning likely significant effects (LSE) on European sites²⁸⁵ potentially affected by the proposed development both alone and in-combination with other plans or projects is assessed. The Examining Authority (ExA) has been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out his duties as the competent authority. Consent for the proposed development may only be granted if, having assessed the potential adverse effects the proposed development could have on European sites, the competent authority considers that it meets the requirements stipulated in the Habitats Regulations.
- 7.1.3 The Secretary of State for Business, Energy and Industrial Strategy is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under the Planning Act 2008 (PA2008). Natural England (NE) is the statutory nature conservation body (SNCB).

7.2 THE APPLICANT'S ASSESSMENT

- 7.2.1 The Applicant provided a No Significant Effects Report (NSER) with its application [APP-119 and APP-120]. The Applicant concluded within its NSER that there would be no LSE, either alone or in-combination with other plans or projects, on any of the European sites screened into the assessment. The Applicant confirmed in response to Q1.2.1 that the proposed development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the NSER [REP2-016].

²⁸⁵ The term European sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), and Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

- 7.2.2 The Applicant subsequently submitted new and updated screening matrices at Deadline (DL) 1 [REP1-003] to address discrepancies identified by the ExA as set out in the Rule 6 letter [PD-004, Annex D]. Further to this, clarification on the information provided in the NSER and how this had been reflected in the new and updated screening matrices was provided by the Applicant in its responses to the ExA's first written questions (FWQ) and second written questions (SWQ) [REP2-016 and REP4-014], at DL5 [REP5-005 and REP5-022] and at DL7 [REP7-025].
- 7.2.3 The Applicant provided updated versions of NSER Tables 3.1 and 3.2 and an updated screening matrix for Stodmarsh Special Protection Area (SPA) at DL5 [REP5-005], superseding the versions provided with the application. NSER Tables 3.1 and 3.2 [REP5-005] were subsequently revised and submitted at DL7, alongside an updated screening matrix for The Swale SPA [REP7-025].

7.3 THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

- 7.3.1 A Report on the Implications for European Sites (RIES) was prepared during the Examination with support from the Planning Inspectorate's Environmental Services Team [PD-013]. The purpose of the RIES was to compile, document and signpost information provided in the application, and the information submitted throughout the Examination by both the Applicant and Interested Parties (IPs), up to and including 26 October 2016 (DL6) in relation to potential effects to European sites. The RIES was published on the Planning Inspectorate's National Infrastructure Planning webpage on 2 November 2016, with IPs, including the relevant SNCB (NE), being notified of this. Consultation on the RIES was undertaken between 2 November 2016 and 24 November 2016.
- 7.3.2 Comments on the RIES were received from the Applicant, NE and Kent Wildlife Trust (KWT). The RIES was not updated upon receipt of the consultation responses.
- **The Applicant** [REP7-025]: explained that the additional bird species were originally included in the screening matrix for The Swale SPA [REP1-003, matrix 10] at the request of NE. The Applicant provided an updated screening matrix for The Swale SPA and updated versions of NSER Tables 3.1 and 3.2 [REP7-025], which include only those species specified on the conservation objectives for each site included in the HRA (copies of the conservation objectives have been provided by the Applicant at DL2 and DL5 [REP2-017, Appendix B and REP5-005, Annex C]). The Applicant confirmed that provision of the updated matrix for The Swale SPA and the updated Tables 3.1 and 3.2 [REP7-025] did not change the assessment contained within, or the findings of, the NSER.
 - **Natural England** [REP8-027]: acknowledged that the Applicant has clarified the correct qualifying features for The Swale SPA at

DL7 [REP7-025] and confirmed its agreement. Otherwise NE confirmed it was in agreement with the remaining content of the RIES.

- **Kent Wildlife Trust** [REP8-028]: noted its disappointment that (as reflected in paragraph 3.26 of the RIES) agreement had been reached between the Applicant and NE that post-construction monitoring of bird mortality as a consequence of collisions with the proposed development was not required. KWT understands the reasons for this decision but maintains that collisions should be measured and monitored.

7.4 RELEVANT EUROPEAN SITES AND THEIR QUALIFYING FEATURES/ INTERESTS

EUROPEAN SITES CONSIDERED

- 7.4.1 Using a 10km buffer zone around the proposed development [APP-119; APP-120; REP5-005 and REP7-025], the Applicant identified eleven European sites for inclusion within the HRA, as follows:
- Stodmarsh SPA*;
 - Stodmarsh Ramsar*;
 - Stodmarsh Special Area of Conservation (SAC)*;
 - Thanet Coast and Sandwich Bay SPA*;
 - Thanet Coast and Sandwich Bay Ramsar;
 - Sandwich Bay SAC;
 - Thanet Coast SAC;
 - Blean Complex SAC;
 - Tankerton Slopes and Swalecliffe SAC;
 - The Swale SPA; and
 - The Swale Ramsar.
- 7.4.2 In its response to Q1.2.11, the Applicant confirmed that during consultation with NE, 10km was agreed as a suitable distance to encompass European sites with qualifying features/ interests that had potential connectivity with the proposed development [REP2-016].
- 7.4.3 The Applicant screened out seven of these sites from needing a more detailed assessment due to the distance between these European sites and the proposed development, the lack of connectivity and the lack of any likely impact pathways [APP-119; APP-120; REP5-005 and REP7-025]. NSER Table 3.2 [APP-119, replaced by REP5-005 and then REP7-025] identifies each of the eleven European sites and their qualifying features/ interests, and explains why only four European sites (and specific qualifying features/ interests of those four sites) were subject to more detailed assessment. The remaining four European sites²⁸⁶ were then considered in more detail within the NSER (section 4) [APP-119]. NE provided confirmation in its Relevant

²⁸⁶ Identified with a * in the list above

Representation of the European sites it considers relevant to this application [RR-065]. The European sites referenced by NE have been considered by the Applicant in the NSER [APP-119; APP-120; REP5-005 and REP7-025].

- 7.4.4 The Applicant has not identified any potential impacts on European sites in other European Economic Area States within its NSER [APP-119 and APP-120] (see also Chapter 3 of our report).

QUALIFYING FEATURES/ INTERESTS CONSIDERED

- 7.4.5 During the Examination, the ExA sought confirmation from the Applicant and NE as to the correct qualifying features/ interests of the eleven European sites screened into the NSER [PD-004; PD-006 and PD-009]. The Applicant confirmed [REP5-005; REP5-022; EV-052 and REP7-025] that it had revised the screening matrices and NSER Tables 3.1 and 3.2 (as reported earlier) to reflect the qualifying features/ interests specified on NE's conservation objectives for each site, rather than those specified on the Joint Nature Conservation Committee (JNCC) Natura 2000 standard data forms. NE has provided advice as to the correct features/ interests of the European sites screened into the NSER [REP4-028 and REP5-055] and indicated that it was content with the information provided [REP8-027].
- 7.4.6 The Applicant's final versions of the screening matrices are presented in REP5-005 in respect of the matrix for Stodmarsh SPA; REP7-025 in respect of The Swale SPA; and REP1-003, in respect of the nine other European sites screened into the assessment. The final versions of NSER Tables 3.1 and 3.2 are presented in REP7-025.

7.5 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT ALONE AND IN-COMBINATION

- 7.5.1 The Applicant concluded that there would be no LSE on any of the eleven European sites screened into the HRA as a result of the proposed development either alone or in-combination with other plans or projects [APP-119 and APP-120].
- 7.5.2 Following the submission at DL6 of an Addendum to the cumulative assessment chapter of the Environmental Statement (ES) [REP6-018] and an updated Embedded Environmental Measures Schedule (EEMS) [REP6-019], the ExA requested in a Rule 17 letter [PD-011] that the Applicant confirm the conclusions of the HRA. The Applicant confirmed that the conclusions of the HRA remained unchanged [REP7-025]. The Rule 17 letter also sought confirmation from NE as to whether there was any change to its earlier position (as previously confirmed in [REP2-073 and REP4-028]) that there would be no LSE on any European site as a result of the proposed development, either alone or in-combination with other plans or projects. NE provided this confirmation at DL8 [REP8-027]. The Joint Councils confirmed in their Statement of Common Ground (SoCG) with the Applicant that all HRA

matters had been considered appropriately in the NSER [REP8-014, ID4.23.3].

- 7.5.3 As a result of the conclusion that there would be no LSE on any European sites, the Applicant has not undertaken an assessment of adverse effects on the integrity of the European sites. In its responses to Q1.2.13 [REP2-073] and Q2.2.6 [REP4-028], NE confirmed its agreement that an appropriate assessment is not required.
- 7.5.4 Notwithstanding the Applicant's conclusion, we are mindful not to pre-empt the approach that may be taken by the Secretary of State in considering if an appropriate assessment is required. The Applicant has provided the conservation objectives for all the European sites screened into the assessment in Appendix B of its response to the FWQ [REP2-017] and Annex C of its DL5 submission [REP5-005], should these be required by the Secretary of State. NE has provided confirmation that the Applicant has submitted the correct versions of the conservation objectives [REP5-055, Q2.2.3].

7.6 MATTERS CONSIDERED DURING THE EXAMINATION

- 7.6.1 The ExA asked nineteen questions on HRA matters in its FWQ [PD-006] and six questions on HRA matters in its SWQ [PD-009]. The correct qualifying features/ interests of the European sites scoped into the NSER were considered during the Examination, as reported earlier in this chapter. Aside from this, the ExA considered the following matters during the course of the Examination in respect of the Habitats Regulations:

IN-COMBINATION ASSESSMENT

- 7.6.2 The Applicant describes its approach to considering potential in-combination effects within Section 3.7 of its NSER [APP-119], including a list of the projects/ plans considered by the Applicant [APP-119, paragraph 3.7.3 and Appendix C]. On the basis of the scale, scope and location of each of the identified projects/ plans in relation to the European sites or land supporting their qualifying features/ interests (as detailed in Appendix C of the NSER), the Applicant concluded that none of the identified projects or plans would contribute towards a potential in-combination effect. The Applicant therefore screened in-combination effects out of further assessment [APP-119, para 3.7.4]. NE has confirmed its agreement that there are no plans or projects where an in-combination effect would arise from the proposed development, and that the assessment of in-combination effects could be scoped out of the screening assessment [REP2-073, Q1.2.6; REP4-028, Q2.2.5; and REP8-027].
- 7.6.3 The RIES [PD-013] describes in paragraphs 3.3 to 3.12 the additional information provided by the Applicant and IPs during the course of the Examination in respect of the in-combination assessment. Subsequent to the publication of the RIES, the ExA's Rule 17 letter [PD-011] sought clarification from the Applicant as to whether the Addendum to

the cumulative assessment chapter of the ES submitted at DL6 [REP6-018] had led to any changes to the conclusions of the NSER [APP-119 and APP-120]. The Applicant confirmed that there were no material changes to the NSER as a result of the submission of the ES Addendum [REP7-025].

- 7.6.4 As described in the RIES [PD-013, para 3.9 to 3.12], the effect of the proposed development on the future deliverability of the Broad Oak reservoir proposal was raised by South East Water (SEW) during the Examination. At the second Issue Specific Hearing on the Broad Oak reservoir proposal on 29 September 2016, SEW confirmed that in relation to European sites, to which the Habitats Regulations apply, it agreed that there would be no in-combination effects resulting from the proposed development and the proposed Broad Oak reservoir [REP5-040, para 33]. Notwithstanding this, differences remain between parties with regards to cumulative effects for EIA purposes, which is covered in Chapter 4 of this report.
- 7.6.5 The ExA is satisfied that the Applicant has included all relevant plans/projects in the in-combination assessment in its NSER [APP-119 and APP-120]. The ExA is satisfied that there is sufficient information in the submitted documents to allow the Secretary of State to conclude that there would be no in-combination effects on European sites resulting from the proposed development and other plans/ projects.

SCOPE OF THE HRA

- 7.6.6 The RIES describes the information provided by the Applicant with the application and during the Examination in respect to the scope of the HRA [PD-013, para 3.13 to 3.18]. NE has confirmed its agreement with the scope of the HRA in its SoCG with the Applicant [REP6-011, section 3.2]. Kent County Council (KCC) has also confirmed it is satisfied that all potential effects on European sites have been considered in the NSER [REP2-069, Q1.2.18].
- 7.6.7 The Applicant prepared a Collision Risk Assessment to assess potential bird mortality as a consequence of collisions with the overhead line [APP-119, Appendix E]. NE confirmed its agreement with the conclusions of the collision risk modelling in its SoCG with the Applicant [REP6-011, ID 3.4.3]. NE has confirmed that in its opinion the installation of any bird flight diverters proposed is on a precautionary basis and is not required to reach the conclusion in the HRA of no LSE [REP4-028, Q2.2.31]. Notwithstanding this, the Applicant would install (as a precautionary measure) bird flight diverters in the vicinity of Monkton (between Pylons PC41 and PC43) and at the Ash Levels (between Pylons PC51 and PC60) to minimise the risk of collisions in these areas; a commitment which is secured in Requirement 11 of the draft Development Consent Order (dDCO) [REP7-003].
- 7.6.8 Taking into account the information provided in the NSER [APP-119; APP-120; REP5-005 and REP7-025], and the information provided by

the Applicant and NE during the Examination, the ExA considers that all relevant European sites and their qualifying features/ interests have been included in the Applicant's assessment and considered during the Examination.

MITIGATION MEASURES

- 7.6.9 The Applicant confirms in the NSER [APP-119 and APP-120] that specific mitigation measures would be required to ensure that there are no LSE on the European sites screened into the assessment. These measures are set out in the EEMS (originally provided in Appendix H of the NSER [APP-120], updated by [REP7-016]). As described in the RIES [PD-013, para 3.19 to 3.26], the ExA sought clarity on the scope of the mitigation and the means of securing this in the dDCO during the course of the Examination [PD-004 and PD-006].
- 7.6.10 As described in the RIES [PD-013, paras 3.23 and 3.24], the Councils [REP2-063; REP2-069 and REP2-067] and KWT [REP2-083] have confirmed they are content that the EEMS identifies all of the necessary mitigation measures required to reach the HRA conclusions; and that these measures are appropriately secured in the dDCO. Subsequent to these agreements, the Applicant submitted updated versions of the EEMS at DL6 [REP6-019] and at DL7 [REP7-016]. In response to a query from the ExA [PD-011], the Applicant confirmed that the updated versions of the EEMSs submitted at DL6 and DL7 did not change the conclusions of the NSER [REP7-025].
- 7.6.11 Agreement has been reached between the Applicant and NE that there is no requirement for post-construction bird collision monitoring of the proposed development [REP2-016 and REP2-073, Q1.2.14 and; REP6-011 ID3.2.4]. KWT maintains its position [REP2-082] that collision mortality should be measured and monitored [REP8-028]. The National Farmers' Union (NFU) raised concerns about the absence of ongoing monitoring of the effectiveness of the proposed bird flight diverters generally (not specifically in connection with birds from European sites) and expressed its disappointment that NE did not consider this to be necessary [REP5-052, para 3.2.5 and REP7-046, para 3.1.3].
- 7.6.12 In response to concerns raised, the Panel explored this issue in further detail, by asking the Applicant and IPs whether they thought reference to 'National Grid's Protocol on Bird Diverters' (which had been submitted by the Applicant [REP6-016, Appendix D]) ('the Protocol') or other best practice should be secured in the DCO. This is reported in Section 5.5 of our report. After considering the matter, the Panel decided not to recommend insertion of a reference to the Protocol in its rDCO, but there is wording provided by the Applicant should the Secretary of State take a different view [REP9-001, point 5]. However, as stated above there is agreement between the Applicant and NE on the finding of no LSE, that post-construction collision monitoring is not required and that the installation of the bird flight diverters (between Pylons PC41 and PC43, and between Pylons PC51 and PC60) is a

precautionary mitigation measure offered by the Applicant and is not required to reach the conclusion of no LSE in the HRA [REP2-016 and REP2-073, Q1.2.14; REP4-028, Q2.2.31 and; REP6-011, ID3.2.4].

- 7.6.13 The ExA is satisfied that the Applicant has proposed appropriate mitigation measures to ensure that the proposed development would not result in any LSE on European sites, and that these measures are adequately secured in the recommended DCO (rDCO).

7.7 OVERALL HABITATS REGULATIONS ASSESSMENT CONCLUSIONS

- 7.7.1 The ExA considers that sufficient information has been provided by the Applicant in its NSER and during the course of the Examination, combined with the views expressed by NE, to allow the Secretary of State to conclude that LSE on European sites during the construction, operation, maintenance and decommissioning of the proposed development can be excluded, provided the mitigation measures secured in the rDCO are delivered. The ExA therefore considers that the Secretary of State can conclude there would be no adverse effects on the integrity of European sites, so there is no need for him to consider whether there are alternative solutions to the delivery of the proposed development, imperative reasons of overriding public interest or the need for compensatory measures.

8 THE PANEL'S CONCLUSIONS ON THE CASE FOR DEVELOPMENT

8.1 INTRODUCTION

- 8.1.1 In this chapter we set out our conclusions on the case for development. As discussed in Chapter 3, Overarching National Policy Statement (NPS) for Energy EN-1(EN-1) provides the primary basis for making decisions on development consent applications for energy NSIPs in England by the Secretary of State under s104 of PA2008, and NPS EN-5 for Electricity Networks Infrastructure (EN-5) is also applicable. Our conclusions on the case for development contained in the application before us are therefore reached within the context of the policies contained therein, together with other matters that may be important and relevant as laid out in Chapter 3. We draw on our conclusions from Chapters 4, 5, 6 and 7.
- 8.1.2 We have had clear regard to relevant national primary and secondary legislation including the Equality Act 2010 and the Human Rights Act 1998 and, where relevant, European legislation and Directives. We have also had regard to the Marine Policy Statement under s104(aa).
- 8.1.3 In reaching our conclusions, we have also had regard to the Local Impact Report (LIR) of the Joint Councils, relevant development plan policies and where relevant, the National Planning Policy Framework (NPPF) including traffic and transport, good design, consultation, the Green Belt, climate change and health and amenity. We have therefore had regard to the NPPF and considered whether there would be any adverse impacts that would conflict with the policy approach set out therein. We find that the proposed development would be in accordance with the overarching principle of the NPPF which seeks to support the transition to a low carbon future in a changing climate taking full account of flood risk.

8.2 NEED FOR THE PROPOSED DEVELOPMENT

- 8.2.1 The importance that Government attaches to the provision of electricity infrastructure is set out in EN-1. This states that there is *"an urgent need for new electricity transmission and distribution infrastructure (and in particular for new lines of 132kV and above) to be provided"*²⁸⁷ in order to meet the significant national need for expansion and reinforcement of the UK's transmission and distribution networks²⁸⁸.
- 8.2.2 As discussed in Chapter 4, the ExA concludes that the need for the scheme has been established; that it would accord with Government's national energy policy, and that it is required to facilitate an already

²⁸⁷ EN-1, para 3.7.10

²⁸⁸ EN-1, para 3.7.2

consented 'project of common interest' under the TEN-E Regulation and amendment (1391/2013) (guidelines for trans-European energy infrastructure), the Nemo Link[®], which is an electricity interconnector between Zeebrugge in Belgium and Richborough in the UK.

8.3 CONSIDERATION OF ALTERNATIVES

8.3.1 In response to a number of submissions received, we examined the way that pre-application alternatives had been considered and also other alternatives during the Examination. We then considered whether the proposed development would give rise to a level of harm which would warrant consideration of alternatives other than those considered by the Applicant. These have been covered in a number of places in our report as follows.

8.3.2 In Chapter 4 of our report we considered the main alternatives studied by the Applicant and the adequacy of the EIA process and ES in the way in which the Applicant considered alternatives. We concluded that we are satisfied that the Applicant made and justified pre-application route changes as part of its embedded mitigation^{289 290}, that the choice of landfall is fixed and that the separation of the landfall element from the application is reasonable (Section 4.4 on pre-application alternatives). We also concluded that we are satisfied that the Applicant acknowledged that technological alternative options such as undergrounding, would be technically feasible; but that the application represented what the Applicant considered to be the best approach after taking into account the findings of the studies of alternatives. These studies considered environmental, social and economic effects²⁹¹ and the costs including lifetime costs, which we concluded is satisfactory (Section 4.4 on pre-application alternatives).

8.3.3 In Chapter 4 there were a number of matters left in abeyance in relation to alternatives and EIA and ES adequacy because of the arguments presented by South East Water (SEW) regarding the fact that the three alternative suggestions (the SEW alternatives) it had put forward had not been considered by the Applicant. It was also because we had not reached a conclusion on the level of harm of the proposed development and whether it could co-exist with the reservoir proposal (Section 4.4 on adequacy of the EIA process and ES). These matters are concluded below.

8.3.4 In Section 5.2 of our report, concerning Landscape and Visual issues, we conclude that the Applicant's approach to the use of the Holford Rules and consideration of geographic and support structure alternatives is proportionate and that its routing appraisals meet the tests set out in EN-5²⁹². We also conclude that there would be no

²⁸⁹ EN-5, para 2.8.7

²⁹⁰ Infrastructure Planning (Environmental Impact Assessment) Regulation 2009 (as amended by The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012)

²⁹¹ EN-1, para 4.4.2

²⁹² EN-5, para 2.8.7

significant harm to landscape and visual amenity that would require further consideration to be given to reasonable alternatives (Section 5.2; overall conclusions).

- 8.3.5 In relation to undergrounding, either the whole or part of the route, we have taken into account the landscape in which the proposed development would be set, the visual impact and the additional cost of undergrounding or subsea cabling. We have also had regard to the environmental and archaeological consequences of undergrounding. Whilst the technical difficulties associated with a non-overhead line alternative are surmountable, we are not satisfied that the benefits of such an option either for all or parts of the route would clearly outweigh any extra economic, social and environmental impacts as per the position in EN-1 (Section 5.2, overall conclusions).
- 8.3.6 In considering Good Design in Section 5.3 of our report, we conclude that the Applicant has set out its design evolution, including alternatives in accordance with EN-1²⁹³ (Section 5.3; conclusions).
- 8.3.7 In the Biodiversity Section 5.5 we conclude that there would be no significant harm to biodiversity and geological conservation interests that would require further consideration to be given to reasonable alternatives²⁹⁴ (Section 5.2; overall conclusions).
- 8.3.8 The Flood Risk, Section 5.8 has also given consideration to alternatives and the need to direct development away from areas at highest risk²⁹⁵ and concluded that the Sequential and Exception Tests have been passed (Section 5.8; overall conclusions).
- 8.3.9 Section 5.9, which covers the Historic Environment, concludes that the historic environment has been given proper attention during the consideration of alternatives (Section 5.9; overall conclusions).
- 8.3.10 In Chapter 6 of our report we conclude that the Applicant's case that the proposed development and the Broad Oak reservoir proposal could co-exist is sound, if the recommended movement to Pylon PC10 is adopted. Therefore we do not consider it necessary to consider the SEW alternatives in any detail because the harm (including any harm that would arise to the reservoir) is not so great as to require this. We also find that the Applicant's consideration of strategic pre-application alternatives in the area of the reservoir proposal to be adequate in terms of the assessment principles adopted (Section 6.4).
- 8.3.11 In Chapter 7, we conclude that alternatives do not need to be considered under the Habitats Directive because we recommend to the

²⁹³ EN-1, para 4.5.4

²⁹⁴ EN-1, para 5.3.7

²⁹⁵ EN-1, para 5.7.9

Secretary of State that an appropriate assessment is not required²⁹⁶ (Section 7.7).

8.4 ENVIRONMENTAL IMPACT ASSESSMENT PROCESS AND THE ENVIRONMENTAL STATEMENT

- 8.4.1 EN-1 requires all proposals for projects that are subject to the EIA Directive must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project²⁹⁷. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended by the Infrastructure Planning (EIA) (Amendment) Regulations 2012 ("the EIA regulations") set out the information for inclusion in an ES in Schedule 4 Parts 1 and Part 2.
- 8.4.2 SEW's objection to the proposed development was in part predicated on it considering the EIA process and the ES to be inadequate in a number of places. SEW argued this was the case because either its Broad Oak reservoir proposal had not been considered and/ or because the SEW alternatives, which it argued could enable the proposed development to co-exist with its reservoir proposal, had not been considered. SEW's case was based on issues it raised with the Applicant's response to the Scoping Opinion, the Applicant's engagement and consultation, the Applicant's consideration of alternatives, the Applicant's failure to consider the reservoir proposal on its assessments of water environment, socio-economic and visual effects and the Applicant's failure to include the reservoir proposal in its cumulative effects assessment (CEA). The Environment Agency (EA) also stated that in its view the reservoir proposal should have been included in the CEA.
- 8.4.3 We concluded in Chapter 4, that we are satisfied that the Applicant undertook the correct approach in responding to the Scoping Opinion and that the pre-application consultation and engagement was adequate. We are also content with the Applicant's decision to scope out the Broad Oak reservoir proposal from the cumulative effects assessment in the ES on the basis of the level of detailed information available at that time and the level of uncertainty about the reservoir proposal. Also that the Applicant's approach regarding the Blean Woods Special Landscape Area and effects on bird mortality were adequate.
- 8.4.4 We now turn to those matters of EIA process and ES adequacy which were challenged by SEW because the Applicant had not given regard to the proposed reservoir and/ or the SEW alternatives, which SEW set out in its Written Representation. These are the matters we did not conclude in Chapter 4. We are now satisfied that the ES is adequate in all these matters. This is because we agree with the Applicant's view that it was not necessary to include the reservoir proposal (including

²⁹⁶ EN-1, para 4.4.2

²⁹⁷ EN-1, para 4.2.1

the SEW alternatives) in the ES as we have found the two proposals could co-exist.

- 8.4.5 The ExA is satisfied that the ES, together with the information provided during the course of the Examination, is adequate and meets the requirements under the EIA Regulations, EN-1²⁹⁸ and EN-5²⁹⁹.

8.5 ASSESSING THE IMPACTS OF THE PROPOSED SCHEME

- 8.5.1 The main issues have been identified in Section 5.1 of our report. They include those which were identified in our initial assessment of principal issues; those which were raised at the preliminary meeting, open floor hearings and in written and oral representations; and all the matters raised by the LIR. We have also considered, in Chapter 6, the potential for the proposed development to co-exist with the Broad Oak reservoir proposal because of the weight that SEW attributed to this point in setting out its objection to the proposed development. All these various issues have been explored and considered during the course of the Examination.
- 8.5.2 Turning to the range of potential impacts that would arise should the scheme be consented (see Chapter 5 and 6) we conclude that:
- 8.5.3 We are satisfied with the approach the Applicant has taken to its consideration of the NPS assessment principles.
- 8.5.4 In landscape and visual terms, accepting that new overhead lines will give rise to adverse landscape and visual effects, we are satisfied that the significant adverse effects which the Applicant predicts would occur, post mitigation, would not be so harmful as to make the proposed development unacceptable in planning terms. We found that the Applicant's assessment has down played the landscape and visual construction impacts, however given the temporary nature and reversibility, we are satisfied that they would not amount to greater than moderate adverse effects for a limited period of time and would not therefore be so damaging as to affect the overall planning balance. We are satisfied that the landscape and visual assessment is adequate. We have taken into account the benefits of the removal of the PX132kV line (Section 5.2 overall conclusions).
- 8.5.5 We have taken into account the embedded landscape mitigation and the planting mitigation which is secured as a concept mitigation planting plan in the rDCO, for later approvals by the relevant planning authority. We are content with the need for post-consent approvals to discharge requirements because the precise location for mitigation planting is at present unknown. In this regard we give weight to the Service Level Agreement which forms part of the s106 agreement between the Applicant and the Councils and which makes provision for

²⁹⁸ EN-1, section 4.2

²⁹⁹ EN-5, section 2.6

reimbursing the Councils for some of the time it takes to assess the post consent submissions for approval. We give some limited weight to the Landscape and Habitat Enhancement Scheme, also secured through the s106 agreement, which would provide landscape, visual, heritage and biodiversity enhancements, but is not required for mitigation (Section 5.2; overall conclusions).

- 8.5.6 From the point of view of good design, we are satisfied that the Applicant set out how its design process evolved in the documents. We are content that the Applicant has balanced the aesthetics of the proposed development with functionality and sustainability in arriving at the design submitted in the DCO application. We are also satisfied that the ES was prepared using the relevant projections, the design has allowed for climate change resilience and appropriate mitigation has been included (Section 5.3 conclusions).
- 8.5.7 The outstanding matter from Section 5.3 on good design, which we now conclude, is that good design is a means by which other NPS policy objectives can be met³⁰⁰. We are content that the other relevant policy objectives have been met as described in this section.
- 8.5.8 We are satisfied that the socio-economic assessment is adequate. In terms of farming and agricultural practices, we are satisfied that the mitigation measures now proposed by the Applicant and contained in the CEMP and its various daughter documents are sufficient to address the concerns raised. We have however suggested that the Secretary of State should consider arrangements for the inclusions of a Land Drainage Consultant in the CEMP using information provided by the Applicant during the Examination.
- 8.5.9 On tourism and local recreational use, we are satisfied that disruption would be only that necessary and would be kept to a minimum. We are also satisfied that appropriate compensation mechanisms would be available in relation to business disturbance. We also consider that the proposed development would only have a minor effect on public rights of way and cycle routes and that mitigation measures in relation to the River Stour navigation would be sufficient to avoid unacceptable impact on amenity. We also give weight to the provisions of the s106 agreement in addressing some of the adverse effects associated with construction stage PRoW closures raised by the Councils (Section 5.4 overall conclusions).
- 8.5.10 In terms of economic activity and employment, we consider that the proposed development would have a positive impact on the national economy and would not have an unacceptable effect on development sites and community infrastructure (Section 5.4 overall conclusions).

³⁰⁰ EN-1, para 4.5.2

- 8.5.11 With regard to geological conservation, we conclude that there would be no adverse impact on any sites of geological conservation importance (Section 5.5 overall conclusions).
- 8.5.12 In terms of biodiversity, we are satisfied that the Applicant's assessment, which concludes that post mitigation, no significant adverse effects would arise on biodiversity receptors as a result of the proposed development, is sound³⁰¹. This is predicated on the embedded mitigation, the future approvals required through the rDCO to secure other necessary mitigation and the protection provided through the BMS and the CEMP. Also we consider the additional requirement which covers long term management in ancient woodland to be necessary. We consider these factors render adverse effects to levels which provide appropriate protection for species and habitats. We have given weight to the mitigation which has been agreed with NE and to the LoNIs which have been issued³⁰². We give weight to the to the Service Level Agreement, which forms part of the s106 agreement and which would reimburse Councils for reasonable costs associated with undertaking post consent approvals. We also give some limited weight to elements of the LHES, to be delivered through the s106 agreement; which has taken opportunities for enhancement and confirm this, in our view, is enhancement not mitigation³⁰³ (Section 5.5 overall conclusions).
- 8.5.13 As to noise and vibration, we accept that there would be noise related effects in different locations during the construction of the proposed development and localised and short term vibration effects. However, the Noise and Vibration Management Plan secured under Requirement 5 and the specific details in relation to construction working hours, secured under Requirement 7, would ensure that adverse effects are managed and limited to certain locations only during construction. In so far as operational noise is concerned, we conclude that with the choice of conductor specified by the Applicant which would result in, a small improvement in the operational noise performance of the overhead line, the residual noise impacts are not significant and are therefore acceptable (Section 5.6 conclusion).
- 8.5.14 Turning to EMFs, we are satisfied that the proposed development would meet the aims of policy advice on EMFs set out in NPSs (Section 5.5 conclusions).
- 8.5.15 Whilst the Panel was concerned that the transport assessment provided by the Applicant failed to use the methodology set out in EN-1 paragraph 13, we consider that the methodology used in the transport assessment was acceptable. In our opinion, the rDCO would provide the local traffic and street authorities with sufficient information and powers to ensure that Temporary Traffic Orders and

³⁰¹ EN-1, para 5.3.3

³⁰² EN-1, para 5.3.19

³⁰³ EN-1, para 5.3.4

Stopping Up Orders are applied in an appropriate manner (Section 5.7 overall conclusions).

- 8.5.16 In terms of the proposed construction traffic management measures, we are satisfied that they would appropriately mitigate and manage the identified adverse environmental effects during construction arising from the proposed development caused by traffic and transport. We also consider that, with the CTMP in place, cumulative effects of traffic from the proposed development and other proposed developments would not be unacceptable (Section 5.7 overall conclusions).
- 8.5.17 In our view, the measures proposed by the Applicant to mitigate the impacts of the proposed development on traffic and transport and on PRoWs, as set out in the CTMP and elsewhere in the DCO, mean that there would be no grounds for refusing consent on these issues (Section 5.7 overall conclusions).
- 8.5.18 In terms of flood risk, we consider that the proposed development, with the flood risk management measures described above in place, would not be subject to an unacceptable level of flood risk, nor would it increase flood risk elsewhere. Furthermore, it would not result in a net loss of functional floodplain storage or impede water flows. We also consider that the proposed development would accord with EN-1 and EN-5 in this regard and that the Sequential and Exception Tests have been passed (within Section 5.8).
- 8.5.19 In terms of water quality and resources, we are satisfied that the Applicant has undertaken sufficient assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment. We are also of the opinion that the Applicant has had appropriate regard to RBMPs and the WFD and its daughter documents and that appropriate provisions are within the rDCO to mitigate adverse effects on the water environment. We are also content that the application is in conformity with the UK Marine Policy Statement (within Section 5.8).
- 8.5.20 In terms of the historic environment, we are content with the level of archaeological assessment undertaken so far, together with that proposed through the agreed Archaeological Mitigation Written Scheme of Investigation (WSI). We place some weight on the historic environment Schedule of the s106 agreement with respect to the outreach and interpretation which we consider would better reveal the significance of the assets. We are also content with the findings of the assessment on historic landscape character. The less than substantial harm, but adverse effect, which would occur to the significance of Tile Lodge Farmhouse, and the less than substantial harm that would occur to other designated heritage assets, represent adverse effects to

be weighed in the overall balance against the benefits of the proposed development³⁰⁴. On their own, we are satisfied that these adverse effects would not prevent the making of the Order (Section 5.9; overall conclusions).

- 8.5.21 Traffic volumes generated by the proposed development during both construction and operational phases are predicted to be below the levels at which the Environmental Protection UK and Institute of Air Quality Management recommend air quality assessments should be undertaken. We are content that these effects were scoped out of the ES. In so far as the effects on air quality from dust, odour, smoke and vehicle emissions, we are content that these would be controlled by the Embedded Environmental Measures Schedule (EEMS) and the CTMP which forms part of the CEMP (Section 5.10).
- 8.5.22 The lighting scheme, coupled with the environmental measures set out in the EEMS to avoid, reduce or compensate for potential effects of lighting on habitats and species satisfactorily controls the effects of lighting from the proposed development.
- 8.5.23 On the basis of the above, there are no air quality or lighting effects that would prevent the making of the Order against the tests set out in EN-1 section 4.10 or 5.6 (Section 5.10; overall conclusions).
- 8.5.24 There are other matters that the NPSs require to be considered. These are civil and military aviation defence issues including Manston Airport, coastal change, land-use including open space, green infrastructure and green belt, waste management and land contamination and ground gases. We are satisfied that none of these matters, either individually or cumulatively, lead to a different conclusion in terms of overall benefits and impacts (within Section 5.11).
- 8.5.25 In Chapter 6, we accept the evidence put forward concerning the need for the Broad Oak reservoir proposal, its status as an identified proposal in WRMP14; and the fact that it represents a lower carbon option than other potential water supply solutions. We have however given the status of the reservoir proposal moderate weight because the detailed design is at an early stage and the reservoir proposal is not allocated or safeguarded within the adopted Local Plan or the emerging draft Local Plan. We did though consider it necessary for us to assess whether the proposed development would preclude any reservoir proposals which may come forward at some future time (end of Section 6.2).
- 8.5.26 We have found that the proposed development would have a limited adverse effect on the reservoir proposal and its mitigation measures for any top water level between 32.5 and 36m AOD. This finding is based on the indicative 36m AOD river diversion and fish pass route provided by SEW. There is however nothing to suggest that this route

³⁰⁴ NPPF, para 134

would also not be a feasible option in relation to the reservoir proposal for any top water level between 32.5 and 36m AOD (end of Section 6.2).

- 8.5.27 We have found that it would be possible for the reservoir proposal and its mitigation to be delivered with the proposed development in place, providing the proposed development incorporates our suggested repositioning of Pylon PC10 and the suggested protective provisions. We recommend that if the Secretary of State decides that an Order should be made, he requires the Applicant to provide an update in connection with the repositioning of Pylon PC10, as set out in full in Section 6.4 of our report. Other necessary substitutions of drawing references have been made in the rDCO (Section 6.4).
- 8.5.28 Having reached the conclusion on physical interaction, other relevant matters relating to the pylons and conductors needed to be secured, in order to ensure that the co-existence of the two proposals could be achieved. This is through protective provisions. We found that with the amendments we propose, the Applicant's protective provisions would be likely to secure a final design for, and the operation of, the proposed development that would restrict some of the locational and access flexibility generally afforded by the rDCO and therefore enable co-existence of the two proposals. The protective provisions incorporating our proposed amendments would provide the necessary security in relation to our finding of limited effect (end of Section 6.3). These are included in the rDCO.
- 8.5.29 There is also nothing to suggest, in terms of the specific issues dealt with in Chapter 6 that the proposed development would be in conflict with the relevant NPSs, EN-1 or EN-5 in this regard. In terms of the three SEW suggested alternatives, we do not consider it necessary to consider them in any detail because the harm, including harm to the Broad Oak reservoir proposal, that could be caused by the proposed development would not be so great as to require this. As detailed above we have considered alternatives in accordance with the specific requirements in the NPSs and EIA Regulations and conclude that these do not require detailed consideration of the SEW alternatives.

8.6 HABITATS REGULATIONS ASSESSMENT

- 8.6.1 Habitats Regulations Assessment (HRA) is a matter for the Secretary of State to undertake as the decision maker and Competent Authority for the proposal. The ExA considers that sufficient information has been provided by the Applicant in its No Significant Effects Report (NSER) and during the course of the Examination, combined with the views expressed by NE, to allow the Secretary of State to conclude that likely significant effect (LSE) on European sites during the construction, operation, maintenance and decommissioning of the proposed development can be excluded, provided the mitigation measures secured in the rDCO are delivered.

8.6.2 The ExA therefore considers that the Secretary of State can conclude there would be no adverse effects on the integrity of European sites, so there is no need for him to consider whether there are alternative solutions to the delivery of the proposed development, imperative reasons of overriding public interest or the need for compensatory measures (Section 7.7).

8.7 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

8.7.1 Section 104(4) PA2008 requires the Secretary of State to determine the application in accordance with the relevant NPSs except to the extent that one or more of subsections (4) – (8) applies. This necessitates consideration of the proposed development against all the relevant policies in the relevant NPSs.

8.7.2 In reaching our conclusions on the case for the proposed development, we have had regard to the relevant NPSs, the joint LIR and all other matters which we consider are both important and relevant to the Secretary of State's decision. We have further considered whether in determining this application, in accordance with the relevant NPSs, it would lead to the UK being in breach of any of its international obligations where relevant. We have concluded that in all respects, these duties have been complied with.

8.7.3 Bringing the above conclusions together, we note the Government's strong policy support for electricity connection infrastructure and the level and urgency of national need and are satisfied that there is a clear and well established need for the scheme. We have also considered whether the approach taken by the Applicant to putting together the application conformed to the NPS policy framework, and we are satisfied that it does.

8.7.4 We have considered pre-application consultation and engagement and the approach taken by the Applicant to optioneering and choice of route for the application and we are satisfied that it followed a robust process. We have also considered the adequacy of the EIA process and ES, and have not found them wanting.

8.7.5 We have weighed against the overall benefits of the scheme, the potential adverse impacts of the proposed development, including any long-term and cumulative adverse effects, as well as the measures proposed to avoid, reduce or compensate for any adverse impacts. We have made findings in relation to the various potential adverse impacts and benefits of the proposed development during construction, operation and decommissioning³⁰⁵.

8.7.6 We have weighed in the balance the adverse landscape and visual residual impacts which it is predicted would occur during construction and operation. Our findings, taking into account the embedded and

³⁰⁵ EN-1, para 4.1.3

other mitigation, is that although these landscape and visual effects would harm the landscape and views; they do not outweigh the benefits of the proposed development. We are also satisfied that the public benefits outweigh the less than substantial harm to the heritage assets.

- 8.7.7 We have also weighed in the balance the arguments presented regarding the need to safeguard the future potential delivery of the Broad Oak reservoir proposal. We have taken account of points made by all parties including those who emphasised the importance of resolving conflicts that would enable the two proposals to co-exist. From information received during the Examination, including plans and sections that were agreed between the parties, we consider that it would be possible for the reservoir proposal and its mitigation to be delivered with the proposed development in place. This is however dependent on the repositioning of Pylon PC10 on the Applicant's design drawings and the inclusion of protective provisions to reduce and avoid adverse impacts. We therefore consider that the adverse impacts would not be so great as to prevent the construction of a reservoir at some point in the future.
- 8.7.8 There are other adverse impacts which would arise from the proposed development, which we have discussed earlier; but none of these matters, either individually or cumulatively, lead to a different conclusion in terms of overall benefits and impacts. However we are satisfied that the proposed development is in accordance with policies in the NPS and the adverse effects do not outweigh the benefits³⁰⁶ to justify a decision which is not in accordance with the NPS.
- 8.7.9 To ensure measures to avoid or reduce potential adverse impacts³⁰⁷ are secured, in some instances, we propose changes to the draft DCO (dDCO). These are described in detail in Chapter 10 and included in the rDCO.
- 8.7.10 We have also had regard to the covenants set out in the s106 agreement, between the Applicant and the Councils, dated 5 December 2016. We have reported those development consent obligations which we consider to be compliant with EN-1 and that we have taken into account in reaching our conclusions and making our recommendation³⁰⁸. We consider that, apart from the Landscape and Habitat Enhancement Scheme (LHES), those tests are fully met and we have taken the obligations into account and placed weight upon them. Whilst the LHES is welcomed and delivers landscape, visual, biodiversity and heritage enhancement, the Applicant has argued it is enhancement not mitigation, a point with which we agree. In our balancing, we have given weight to the LHES as a benefit, but not as a measure to reduce adverse impacts.

³⁰⁶ Section 104(7) of PA2008

³⁰⁷ EN-1, para 4.1.3

³⁰⁸ EN-1, para 4.1.8

- 8.7.11 There are no HRA matters to prevent the making of the Order.
- 8.7.12 The ExA therefore concludes that, for the reasons set out in the preceding chapters and summarised above, development consent should be granted, subject to the incorporation of the changes it has made to the rDCO as discussed in detail in Chapter 10. The following Chapter 9 considers compulsory acquisition and other land matters.

9 COMPULSORY ACQUISITION AND RELATED MATTERS

9.1 THE REQUEST FOR COMPULSORY ACQUISITION AND RELATED POWERS

- 9.1.1 The application for the Development Consent Order (DCO) seeks powers for the Compulsory Acquisition (CA) of rights over the Order land and for the temporary use of land both for construction and maintenance purposes. The Applicant is not seeking to acquire the freehold of any Order land but is seeking the power to extinguish private rights over land and impose restrictions on it as well as to creating new rights over it.
- 9.1.2 The Order limits of the DCO establish the extent of the land affected by the CA powers sought along the corridor route. The Applicant however would only require permanent rights to access and maintain the development over a minimum corridor width of approximately 60m [REP8-004]. A full description of the extent of the land required by the Applicant in order to carry out the construction of the proposed development, and subsequently to allow access and maintenance, is set out within the Environmental Statement (ES) Project Description [APP-029, Section 3].
- 9.1.3 At the commencement of the Examination, the application was accompanied by:
- a Statement of Reasons (SoR) [APP-008];
 - a Funding Statement [APP-009];
 - a Book of Reference (BoR) in three parts with a Schedule of Variation [APP-010, APP-011, APP-012 and OD-007];
 - Land Affected Plans and Land Plans [APP-014, APP-015 and AS-007];
 - Extinguishment of Easements, Servitudes and other Private Rights Plans [APP-016];
 - Special Category Land Plans and Crown Land Plans [APP-017];
 - and
 - Access, Rights of Way and Public Rights of Navigation Plans [APP-019].
- 9.1.4 The Funding Statement was not updated during the Examination. The Access, Rights of Way and Public Rights of Navigation Plans, which are secured in the rDCO, were also not updated during the Examination. The Land Affected Plans show the Order limits without identifying individual plots or the six classes under which land or rights may be acquired permanently or land possessed temporarily, which are described later in this chapter. Whilst these plans were part of the application, they were not updated during the Examination and are not secured in the rDCO.
- 9.1.5 Documents and plans accompanying the application have been revised during the course of the Examination, and the latest versions are:

- the SoR [REP8-004];
- the BoR [REP8-005, REP8-006 and REP8-007];
- Land Plans [REP8-008];
- Extinguishment of Easements, Servitudes and other Rights Plans [REP8-009]; and
- Special Category Land Plans and Crown Land Plans [REP8-010].

9.1.6 The details of the powers sought in order to implement the required CA, including interference with third party rights, and also the related temporary possession of land and other compulsory powers sought are set out in Parts 3, 4, 5 and 6 of the rDCO. In terms of CA and interference with third party rights, Article 21 of the rDCO authorises National Grid (NG), and UK Power Networks (UKPN) with respect to UKPN works, to compulsorily acquire rights, or impose restrictions, as described in the BoR, over the Order land. The rDCO defines the undertaker as NG and UKPN for the UKPN works.

9.1.7 Article 23 authorises the extinguishment of private rights and restrictive covenants over the land subject to the CA of rights or imposition of restrictions, in so far as their continuance would be inconsistent with the exercise of the rights acquired or the burden of the restriction imposed. The article also extinguishes private rights over land owned by the undertaker, within the order limits, required for the purpose of the Order. Private rights and restrictive covenants over land over which temporary possession is taken would be suspended and unenforceable during the period of occupation by this article.

9.1.8 Article 24 provides that, following the suspension of rights during temporary occupation, rights that relate to NG and UKPN apparatus which has been dismantled or removed during the occupation would be extinguished once the land is returned to the owner. Article 26 permits the acquisition of rights or imposition of restrictions in the subsoil of or airspace over land subject to CA in accordance with Article 21 and provides that, where such rights have been acquired or restrictions imposed, the undertaker shall not be required to acquire an interest in any other part of the land.

9.1.9 The powers sought in relation to the temporary use of land do not constitute CA and are provided for in separate articles in the rDCO, albeit within the powers of acquisition section. Article 28 would enable NG to take temporary possession of the land specified in Part 1 of Schedule 11 to exercise the powers set out in the BoR for the purposes described in Part 1 of Schedule 11 and any other Order land in respect of which no notice of entry has been served or general vesting declaration made.

9.1.10 Article 29 would enable UKPN to take temporary possession of the land specified in Part 2 of Schedule 11 to exercise the powers set out in the BoR for the purposes described in Part 2 of Schedule 11 and any other Order land relating to the UKPN works in respect of which no notice of entry has been served or general vesting declaration made.

These articles are separate to accommodate their references to different parts of rDCO Schedule 11. Article 30 would enable the undertaker to take temporary possession of land within the Order Limits for the purpose of maintaining the authorised development for a period of five years from first operational use or the completion of mitigation planting.

- 9.1.11 The SoR sets out in more detail the above rDCO articles together with those that relate to other compulsory powers sought [REP8-004, Section 5]. The SoR also describes the land over which all of these powers are sought [REP8-004, Section 6].

9.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

- 9.2.1 The SoR indicates that the Applicant's purpose for seeking CA is to secure the rights required to construct, operate and maintain the proposed development and to remove an existing overhead line [REP8-004]. The powers sought relate to the acquisition of rights and the temporary possession of land. The BoR sets out in detail five classes under which rights may be acquired permanently or land possessed temporarily [REP8-005]. These are:

- Class 1 - CA of rights for the authorised development;
- Class 2 - CA of rights of access;
- Class 3 - Temporary use for construction, mitigation, maintenance dismantling and/or access;
- Class 4 - Temporary use for dismantling of redundant infrastructure; and
- Class 5 - Temporary use for access.

- 9.2.2 The SoR describes the proposals for the use and development of the land and the purposes for which the powers are sought in Sections 3 and 7 [REP8-004]. Table 7.1 lists land where permanent rights would be acquired by the Applicant or UKPN for the authorised development and includes the purpose for which the land may be acquired. Table 7.2 lists land where the Applicant and UKPN require temporary use of land and includes the purposes for which this land would be used. Table 7.3 lists land where the Applicant and UKPN seek to extinguish private rights and restrictive covenants relating to apparatus to be removed from land that would be subject to temporary possession. This power is restricted to private rights and restrictive covenants which are related to apparatus belonging to NG and UKPN.

CROWN LAND

- 9.2.3 The SoR explains that rights are also sought over Crown land and identifies the relevant plots [REP8-004, Section 12 and Table 11.2]. Position statements were submitted by the Applicant and the Crown Estate at Deadline (DL) 9 [REP9-001 and REP9-008], and matters relating to these statements are addressed later in this chapter.

STATUTORY UNDERTAKERS' LAND

- 9.2.4 If a Statutory Undertaker has made a representation about the CA of land or right over land which is to be acquired for the purpose of their undertaking, and this is not withdrawn, section 127 of the Planning Act 2008 (PA2008) applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the Secretary of State is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land. Section 138 applies where a Statutory Undertaker has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the Secretary of State is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 9.2.5 At the Panel's request for further information [PD-006, Q1.5.16], the Applicant made various representations regarding s127 and s138 of PA2008 in respect of the following Statutory Undertakers [REP2-001]:
- South East Water Limited (SEW) [REP2-032];
 - Southern Water Services Limited (Southern Water) [REP2-033];
 - Southern Gas Networks Plc [REP2-034];
 - Environment Agency (EA) [REP2-035]; and
 - Network Rail [REP2-036].
- 9.2.6 The EA submitted a RR relating to its land interests [RR-022] indicating that heads of terms had been signed, and the SoCG with the Applicant [REP8-013] indicates that discussions between the parties are continuing. The representation was not withdrawn, and we therefore consider that s127 of PA2008 is engaged. Southern Water made a representation concerning its apparatus [AS-003]. Its draft SoCG with the Applicant, submitted at DL2, records that a separate agreement to address its concerns had not yet been agreed [REP2-029]. Southern Water also advised of outstanding issues regarding protective provisions at DL6 [REP6-029]. The Applicant has advised that the separate agreement was not in place at DL7, Southern Water's concerns regarding its apparatus remained and that the position would be confirmed to the Secretary of State in due course [REP7-008]. We therefore consider that s127, of PA2008 is engaged in relation to Southern Water. In relation to the SEW, Southern Gas Networks and Network Rail, representations, as identified in Appendix D to this report, these have not been withdrawn, and we consider s127 to be engaged.
- 9.2.7 The Applicant made further representations regarding s138 of PA2008 in respect of the following Statutory Undertakers and communications code network operators [REP2-001]:
- British Gas Corporation Limited [REP2-037];
 - South Eastern Power Networks Plc [REP2-038];

- British Telecommunications Plc (BT) [REP2-039];
- Level 3 Communications Ltd and Level 3 Communications UK Ltd [REP2-040];
- Vodafone Limited [REP2-041]; and
- Virgin Media Limited [REP2-042].

9.2.8 British Gas Corporation Limited has not submitted any representations during the Examination. The Applicant has advised that South Eastern Power Networks Plc is now part of UKPN and the BoR was amended during the Examination to reflect this fact [REP8-012, para 2.3.4]. No representations were made in relation to the extinguishment of any relevant rights or the removal of relevant apparatus. The Applicant has advised that BT did not consider a SoCG to be necessary and that Virgin Media Limited did not respond to a similar request. No representations were made by either body. No representations were received from Level 3 Communications Ltd or Vodafone Limited.

OPEN SPACE

9.2.9 The Applicant is also seeking rights over Special Category Land, more specifically classed as Public Open Space [REP8-004, Section 11]. The SoR describes this land as agricultural, industrial and verge land [REP8-004, Table 11.1]. The relevant plots of land are included in the BoR [REP8-007] and the Special category Land Plans and Crown Land Plans [REP8-010] and are in the ownership of Canterbury City Council (CCC).

9.2.10 Section 132 of PA2008 says that an order granting development consent which authorises the CA of a right over open space will be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of the subsections applies. Subsection 132(3) applies if the Order land, when burdened with the Order right, will be no less advantageous to the persons in whom it is vested, other persons entitled to rights of common or other rights and the public. At DL2, the Applicant made representations regarding s132 of PA2008 in respect of special category land [REP2-043]. These explain that the Applicant's draft DCO (dDCO) would authorise the CA of rights over land forming part of open space land as referred to in s132 of PA2008 and falling within the definition of special category land in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, and so the Applicant considers that s132 of PA2008 is engaged. Since the Applicant is not seeking to acquire land forming part of open space, s131 of PA2008 is not engaged by the dDCO.

9.2.11 At the CA Hearing (CAH) on 20 October 2016, in response to a question from the Panel, the Applicant explained that the inclusion of this land as open space is not due to any official designation [REP6-010]. It is however based on the Applicant's surveys of the land which have identified historic trespass without consent, and current use of the land to graze horses, again apparently without consent. The Applicant believes that the recreational use of this land may be

unauthorised and s132 of PA2008 may not be properly engaged. In any event, the Applicant's position is that the use of this land would not be less advantageous with the burden of the rights sought.

OTHER MATTERS

- 9.2.12 The dDCO seeks to incorporate the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 with some modifications (Article 25) and modifies the provisions set out in s158 of the Act relating to the defence of statutory authority in relation to noise nuisance (Article 37).
- 9.2.13 Section 120(5)(a) of PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. Section 117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in a number of instances the DCO seeks to apply, modify or exclude statutory provisions, it is in the form of a statutory instrument.

9.3 THE REQUIREMENTS OF THE PLANNING ACT 2008 (AS AMENDED)

- 9.3.1 CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met.
- 9.3.2 Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate³⁰⁹. A conclusion on this matter is reached later in this chapter.
- 9.3.3 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean however that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out, and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this chapter.
- 9.3.4 Section 123 requires that one of three conditions must be met by the proposal³¹⁰. The Panel is satisfied that the condition in s123(2) is met

³⁰⁹ Guidance related to procedures for compulsory acquisition of land DCLG, September 2013

³¹⁰ (1) An order granting development consent may include provision authorising the CA of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for CA of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

because the application for the DCO includes a request for CA of the land to be authorised.

9.3.5 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must be explored;
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

9.3.6 Details of the changes made to the CA powers sought by the Applicant were tracked prior to and during the Examination process [REP5-001 and REP8-001]. This was done in Schedules of Variation [OD-007 and REP5-003] and the first section of the updated BoR [REP8-005]. All these changes were incorporated in the main body of the updated BoR submitted at DL8 [REP8-005, REP8-006 and REP8-007].

9.4 HOW THE EXAMINING AUTHORITY EXAMINED THE CASE FOR COMPULSORY ACQUISITION

9.4.1 The Panel raised first written questions (FWQ) [PD-006] in relation to the request for CA powers. The questions covered a range of issues including explanations of various matters included in the application SoR and Relevant Representations (RRs). The Applicant was also requested to confirm entries and complete a CA Objections (CAO) Schedule provided by the Panel [PD-006, Annex A].

9.4.2 The Applicant provided responses to these questions at DL2 [REP2-016 and REP2-017]. These responses included the confirmed and completed CAO Schedule [REP2-017, Appendix I], a schedule of Crown land [REP2-018] and various submissions in relation to s127 and s138 of PA2008 referred to previously. Interested Parties (IPs) also provided responses to these questions at DL2. These responses are examined in more detail when the cases of those who responded are considered later in this chapter.

9.4.3 In the light of the responses to its FWQs, other written submissions, and matters raised at hearings, the Panel asked a number of second written questions (SWQ) [PD-009]. These questions included explanations of various matters within the submitted written representations (WRs) and DL3 submissions.

9.4.4 The Applicant provided responses to SWQs at DL4 [REP4-014 and REP4-015] and IPs also responded, as identified later in this chapter.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

- 9.4.5 A CAH was held at Canterbury Cathedral Lodge, The Precincts, Canterbury on 19 and 20 October 2016. At the CAH representations were made by a number of Affected Persons (APs).
- 9.4.6 At the CAH, the Panel pursued a number of matters with the Applicant as set out on the agenda [EV-055]. A written summary of the oral case presented at the CAH was submitted by the Applicant at DL6 [REP6-010], and the Applicant provided an updated CAO Schedule at Deadline 7 [REP7-026]. The Panel also pursued a number of matters with APs, some of whom also submitted oral case summaries, and these are addressed later in this chapter.

9.5 THE APPLICANT'S GENERAL CASE FOR THE GRANT OF COMPULSORY ACQUISITION POWERS AND RELATED MATTERS

- 9.5.1 The Applicant's case for the grant of CA powers is set out in the final Examination SoR [REP8-004] together with the Funding Statement [APP-009] and the final Examination BoR [REP8-005, REP8-006 and REP8-007].
- 9.5.2 The Statement of Reasons explains that it forms part of a suite of documents accompanying the application and should be read alongside those documents [REP8-004]. These include:
- the final Examination Land Plans [REP8-008];
 - the final Examination BoR [REP8-005, REP8-006 and REP8-007];
 - the Funding Statement [APP-009];
 - the Need Case [APP-129]; and
 - the consideration of alternatives in the ES [APP-029].
- 9.5.3 Additional information in relation to Crown Land, open space, and Statutory Undertakers' land was submitted in response to the Panel's questions and in further representations submitted by the Applicant as previously described.

REQUIREMENT FOR THE COMPULSORY ACQUISITION OF THE ORDER LAND (SECTION 122(2) AND (3))

- 9.5.4 The Applicant explains, in the SoR [REP8-004], its clear proposals for the use of the CA land. Section 8 of that document sets out the use to which the rights to be acquired would be put. The Applicant asserts that all of the CA land, shown on the Land Plans and described in the BoR, is required either for the purposes of the project, to facilitate it or for purposes incidental thereto. The nature of the rights required for the project is set out in Section 5 of the SoR.
- 9.5.5 The rights to be acquired would be for the construction, operation and maintenance of the 400kV overhead line. They would be permanent easements rather than temporary wayleave rights. The justification for acquiring permanent easements is set out in the SoR. The removal of the UKPN infrastructure to facilitate the construction of the proposed development would also result in the requirement for further incidental works to be done to the UKPN network to maintain security of local

electricity supply. The majority of land over which permanent rights are proposed to be acquired would experience only minor interference with the use of the land. For example, a significant proportion of the land over which permanent rights would be acquired is in agricultural use; the owners of such land would be able to continue to use the land for this purpose once construction is completed and it is likely that they would experience only limited interference over the lifetime of the development.

GENERAL JUSTIFICATION FOR THE EXTENT OF THE ORDER LAND

- 9.5.6 Permanent rights are required to access and maintain the development over a corridor with a minimum width of approximately 60 metres [REP8-004, para 2.8]. This width would include areas over which conductors would swing under the maximum envisaged wind load and was explained in response to the Panel's FWQs [REP2-016, Q1.4.6 and REP2-017, Appendix G]. Permanent rights are also required to access the corridor described above, and these were identified in response to the Panel's FWQs [REP2-001 and REP2-015].

ALTERNATIVES TO COMPULSORY ACQUISITION

- 9.5.7 The SoR, Section 8, sets out the consideration given to alternatives to CA [REP8-004, Section 8.4]. In order to operate and maintain the proposed development, rights in the ownership of parties other than the Applicant would need to be acquired. Any practicable alternative location for the proposed development would similarly require the acquisition and/or use of third party land. The means that acquisition in relation to third party land cannot be avoided. The Applicant has also sought to use powers of temporary use rather than CA of rights as a more proportionate measure where the permanent acquisition of rights would not be required.
- 9.5.8 In many cases, wayleaves or easements currently exist for the undertaker to enter on and remove the UKPN lines. However, in some cases these do not exist for the UKPN assets to be removed or fewer disturbances would result from acquiring an alternative access to that provided in the existing wayleaves or easements. The CA would therefore include for the removal of the UKPN lines where relevant. The rDCO also provides that the Applicant and UKPN may temporarily occupy land in order to remove redundant infrastructure.
- 9.5.9 The Applicant has made progress in acquiring some rights in land, and will continue to seek to acquire all the rights it needs by voluntary agreement, subject to the DCO being made. It has undergone extensive consultation with all persons with an interest in the relevant

land in order to try to avoid the need for CA in accordance with the DCLG Guidance³¹¹ [REP7-006, Appendix B, Action 20].

- 9.5.10 Notwithstanding completing voluntary agreements, the Applicant still seeks to compulsorily acquire rights through the dDCO. This is because CA powers would enable it to deliver its statutory and contractual duties without potential delay, if for any reason the voluntary acquisition of land or rights is ultimately unsuccessful.
- 9.5.11 The Applicant considers that, without the powers of acquisition being compulsory, the urgent national need for the proposed development could not be met. This is because the rights required within the Order land might not be assembled, uncertainty could then exist as to construction and the Applicant's objectives may not be achieved.

ALTERNATIVES TO THE PROPOSED DEVELOPMENT

- 9.5.12 The SoR sets out the consideration given to alternatives to the proposed development [REP8-004, Section 8.5]. The assessment of alternatives at each stage is described in the ES [APP-029]. This includes the consideration of alternative strategic options, route corridors, detailed routes, undergrounding and the consideration of representations made during consultation. Further information is provided in the application through the Strategic Options Report, Route Corridor Study (RCS), Preferred Connection Option and Route Corridor Report (PCORCR) and Connection Options Report (COR) [APP-130, APP-131, APP-132 and APP-133]. At each stage of the process, the Applicant considered alternative options balancing the environmental, economic, engineering issues with the representations made during each stage of consultation.

AVAILABILITY AND ADEQUACY OF FUNDS

- 9.5.13 The availability of funds for compensation is considered in the SoR [REP8-004, Section 8.8], the Funding Statement [APP-009] and in the Applicant's written summary of case put orally at the CAH [REP6-010].
- 9.5.14 The Funding Statement explains that the Applicant is the sole owner and operator of the high voltage electricity transmission network in England and Wales. It has a duty under the Electricity Act 1989 to develop and maintain an efficient, co-ordinated and economical system of electrical transmission. In return, users of the transmission network pay a tariff to the Applicant. This revenue is then used by the Applicant to maintain, improve and invest in the transmission network. As there is a stable demand for use of the transmission network in the UK, there is a reliable revenue stream for the Applicant.
- 9.5.15 The Applicant's parent company is National Grid plc which is a multinational electricity and gas utility company. It has a primary

³¹¹ Guidance related to procedures for compulsory acquisition of land DCLG, September 2013

listing on the London Stock Exchange and is a constituent of the FTSE 100 Index.

- 9.5.16 The RIIO price control arrangement for National Grid plc, which began on 1 April 2013, put in place all funding arrangements to allow National Grid plc licensed entities, including the Applicant, to discharge its duties as Transmission Operator and Owner. This includes mechanisms to fund capital costs to construct new, efficient, co-ordinated and economical transmission equipment, also providing provision for associated costs including CA and foreseeable incidental costs.
- 9.5.17 The Applicant has a regulatory asset value over £11bn whilst National Grid plc has a regulatory asset value over £37bn. The Applicant's Annual Report and Accounts for 2014/2015 show an operating profit of £1.227bn. The estimated cost of implementing the new 400kV infrastructure, including UKPN diversion works, is approximately £73.2million. The cost of removing the UKPN PX route is approximately £10.9million [APP-009]. The total cost of payments for CA, incentive payments, disturbance, injurious affection and related professional fees is estimated at £3.9m within these overall figures.
- 9.5.18 The Applicant has taken expert advice on the likely costs of implementing the proposed development. This includes the cost of construction and the funding of the acquisition of the interests in land described in the BoR [REP8-005, REP8-006 and REP8-007]. This process has used national, regional and local data to compile the land acquisition estimates. The Applicant's in-house specialists have cross-checked the project specific data against data obtained from recent projects to ensure greater overall accuracy. Experience across the Applicant's projects indicates that a 10% contingency is sufficient to contain such costs, and the above figures include such a contingency.
- 9.5.19 The Applicant is confident that land acquisition costs and potential compensation claims for blight can be fully met as and when they are required under the provisions of the DCO. This would include any 'early payments' under the blight provisions of the Town and Country Planning Act 1990.
- 9.5.20 The dDCO allows the Applicant to carry out all of the Authorised Development itself, but alternatively allows UKPN to undertake the UKPN works [REP6-010, para 7.1]. UKPN requires to be indemnified for its costs, whereby the Applicant would be responsible for the costs of CA, and the Funding Statement has been prepared on this basis. In the CAH we asked what made the Applicant responsible for UKPN costs. In response, the Applicant suggested that UKPN would not undertake work in connection with the Order, if made, if this was not the case.
- 9.5.21 The above matters are the subject of three agreements between the Applicant and UKPN, as follows [REP6-010, para 7.3]:

- one is for works at Canterbury which has been signed;
- the second is a commercial agreement at Richborough which is awaiting final signature; and
- the third is an over-arching framework agreement which has been agreed between the parties' lawyers but needs to go to the respective principles for final sign off.

9.5.22 UKPN has confirmed that it is working towards the signing of the outstanding agreements [REP7-006, Appendix A, Action 11]. The Applicant has advised that these agreements are commercially confidential [APP-009, para 5.1], and no further information was provided in relation to them during the Examination.

SECTION 122(3) - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST FOR COMPULSORY ACQUISITION

9.5.23 The Applicant's position that there is a compelling case in the public interest for CA is set out in the SoR [REP8-004, Section 8.3]. The Applicant has described the need for electricity interconnectors to contribute to a properly functioning European energy market and the security of supply in Great Britain [APP-129].

9.5.24 In February 2015 the Applicant, National Grid, Nemo Link Ltd and Elia, the Belgian Transmission System Operator, agreed to proceed with an interconnector between Belgium and the UK known as the Nemo Link[®]. The existing UK distribution network does not have the capacity to carry the additional 1000MW from the interconnector, which has resulted in the need for new infrastructure between Richborough and Canterbury in Kent.

9.5.25 The proposed development would provide critical transmission capacity necessary for the safe and secure connection of the Nemo Link. Section 4 of the SoR describes the iterative process that the Applicant has followed involving appropriate environmental appraisal, consultation, consideration of alternatives and engineering design. Further detail is provided in the route corridor and option reports [APP-130, APP-131, APP-132 and APP-133]. This process has resulted in a scheme which best balances the Applicant's duties and Government guidance.

9.5.26 Section 7 of the SoR explains that the rights required for the proposed development are necessary to facilitate the scheme. It also explains that the Applicant has sought to ensure that a proportionate approach has been taken in identifying the permanent and temporary rights that need to be acquired to achieve the delivery of the scheme. The temporary use of land for the construction of the proposed development would allow land to be occupied without having to acquire an interest in it to carry out the works. This would be followed by the acquisition of a permanent interest in a lesser area of land once the works are completed. This would have a lesser impact on the landowner and would thus be a more proportionate approach.

9.5.27 The Applicant is therefore of the view that a compelling case exists for the CA of rights and that this outweighs the interference with private rights. There would be relatively limited interference with private rights in most cases, and the public interest in delivering the scheme on time would not be likely to be met without the use of CA powers. As such, it is in the public interest for the rights described in the Land Plans and BoR to be compulsorily acquired.

HUMAN RIGHTS

9.5.28 The Applicant's case in relation to Human Rights is set out in the SoR [REP8-004, Section 13].

9.5.29 The Applicant is of the opinion that rights under the European Convention on Human Rights (ECHR) would be likely to be engaged. The Applicant is however satisfied that the proposed development would not conflict with the ECHR. This is because it would be proportionate in that there is a compelling case in the public interest for the proposed development which outweighs the impact on individual rights. In this context, it is relevant that those affected will be entitled to compensation.

9.5.30 With regard to Article 1, First Protocol and Article 8 of the ECHR, the Applicant has weighed any interference with these Convention rights as a result of including compulsory powers within the DCO with the potential public benefits if the DCO is made. Firstly, the Applicant considers that there would be very significant public benefit arising from the grant of the DCO. That benefit can only be realised if the DCO includes the grant of powers of CA and temporary use. The Applicant has concluded that the significant public benefits outweigh the effects of the DCO upon persons who own property in the Order limits such that there would not be a disproportionate interference with their Article 8 and Article 1, First Protocol rights. The need for the connection that would be brought about by the proposed development is well established and is of national importance [APP-129]. Secondly, those affected by the exercise of CA or temporary use powers would be entitled to compensation for which the Applicant has the resources.

9.5.31 Under Article 6, third parties have been able to make representations on the application for the DCO whilst it was being prepared in accordance with PA2008. The consultation included the known owners and occupiers of land within the Order limits. It also included those who might be able to make claims either under section 10 of the Compulsory Purchase Act 1965 in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973. The beneficiaries of restrictive covenants and other rights that would be overridden by the exercise of powers in the DCO would be capable of making claims under section 10 of the Compulsory Purchase Act 1965.

9.5.32 Furthermore, representations could be made by way of objections to the application under PA2008. The Examination included careful scrutiny of any powers of CA or other compulsory powers, to ensure

that they are justified and proportionate. It also included CAHs where requested by APs, where they could make oral representations about the CA requests.

- 9.5.33 Should the DCO be made, a person aggrieved may challenge the DCO by judicial review in the High Court. In relation to disputes about compensation, APs would have the right to apply to the Upper Tribunal (Lands Chamber), an independent tribunal.
- 9.5.34 For these reasons, the Applicant considers that the inclusion of powers of CA would not breach the Convention rights of those whose are affected.

THE EQUALITY ACT 2010

- 9.5.35 At the CAH, the panel asked the Applicant to consider whether there were any duties under the Equality Act 2010 relevant to the application, and if so, how these had been addressed. The Applicant advised that it is not included in those public bodies on which the 2010 Act imposes a public sector equality duty, but that they do include the Secretary of State [REP6-010, para 4.3]. Section 149(2) extends the public sector equality duty to those that are not public bodies but who exercise public functions. In applying for development consent for an overhead line, the Applicant does not consider that it is exercising a public function for the purposes of the 2010 Act.
- 9.5.36 Whilst the ES does not identify adverse effects in terms of equality, it does cover the socio-economic effects of the proposed development. The Applicant suggests that, as the proposed development would be generally remote from large areas of population, passing through open agricultural land, it would not obviously engage with any of the protected characteristics to which the public sector equality duties apply. The Applicant also suggests that, in so far as the Secretary of State may need to comply with the public sector equality duty in s149 of the 2010 Act, he can record that the proposed project does not conflict with this duty and that no party has suggested otherwise.

APPLICANT'S CONCLUSION ON THE GENERAL CASE FOR THE GRANT OF COMPULSORY ACQUISITION POWERS AND RELATED MATTERS

- 9.5.37 For the above reasons, the Applicant considers that the inclusion of powers of CA and related matters within the DCO in respect of rights in land as set out in the BoR [REP8-005, REP8-006 and REP8-007] and shown on the Land Plans [REP8-008] is justified.

9.6 THE APPLICANT'S CASE IN RELATION TO SPECIAL CATEGORY LAND - OPEN SPACE - SECTION 132 PLANNING ACT 2008 (AS AMENDED)

- 9.6.1 The Applicant has made representations pursuant to s132 of PA2008 in relation to rights that would be compulsorily acquired over land forming part of an open space [REP2-043]. The rights to be acquired

are for the construction, operation and maintenance of the authorised development, including the installation of Pylon PC1. No land is identified in the rDCO that is, or may be, common land, or a fuel or field garden allotment.

- 9.6.2 The Applicant has identified the individual plots that would be affected [REP2-043, table at para 3.4], and these are also identified in the rDCO, in the BoR and on the Land Plans. The land affected is described as generally agricultural land with small areas of industrial and verge land. The Applicant has suggested that the land has been subject to historic trespass without consent and that current grazing on the land may be without consent [REP6-010, para 6.3]. It is on this basis that the Applicant has made representations, notwithstanding the absence of any evidence of formal rights.
- 9.6.3 The Applicant's case is that no land forming part of open space land is to be acquired compulsorily. Rights to be acquired compulsorily would be for the construction, operation and maintenance of the proposed development. There would be temporary interference to the use of the open space land whilst construction takes place. In the longer term however, the recreational use of the land would be able to carry on, public access would not be permanently affected and no land would cease to be open space land.
- 9.6.4 The Applicant's position therefore is that the open space land, when burdened with the rights sought under the DCO, would be no less advantageous to those persons in whom it is vested and to any persons entitled to rights over the land or the public's enjoyment of that land. Accordingly, the test in s132(3) of PA2008 is satisfied.

9.7 THE APPLICANT'S CASE IN RELATION TO CROWN LAND - SECTION 135 PLANNING ACT 2008 (AS AMENDED)

- 9.7.1 At various stages during the course of the Examination, the Applicant advised that it saw no issues that would prevent Crown consent being given as required by s135(1) and s135(2) of PA2008 and that this consent was anticipated before the end of the Examination [REP7-009].
- 9.7.2 The Applicant is of the opinion that its suggested Article 22 accords with s135 of PA2008 because it makes the authorisation of CA of a third party interest in Crown land subject to the undertaker obtaining Crown authority consent [REP9-001]. The Applicant advises that it continues to liaise with the Crown so as to reach agreement on this matter so that the Crown will issue consent pursuant to s135 of PA2008 before any Order is made.
- 9.7.3 Various plots within the Order land are subject to escheat and have fallen to be dealt with by The Crown Estate [REP8-004, para 12.5]. The Applicant has not sought to obtain consent from The Crown Estate in respect of interests sought over these plots, on the basis that it has not been able to gain such consents previously.

9.7.4 The Applicant intends to rely upon an existing easement which provides for the ability to remove the infrastructure within these plots. UKPN, as statutory successor to Central Electricity Authority in this instance, could rely on these rights to enter the land and carry out the dismantling work [REP4-014, Q2.4.14]. The Applicant is satisfied that reliance on this easement would allow it to undertake the proposed development. The Applicant has also stated that The Crown Estate has indicated that, although it will not grant consent for the rights sought, it will not take any action to prevent the Applicant or UKPN removing the infrastructure.

9.8 THE OBJECTIONS RECEIVED TO THE COMPULSORY ACQUISITION AND RELATED MATTERS, PROPOSALS AND THE APPLICANT'S RESPONSE

INTRODUCTION

9.8.1 In this section of the chapter, we have first identified the overall objections made by Finns LLP and the NFU, as they represented a significant number of the objectors. We then identify each objection set out in the CAO Schedule, grouped where possible. Our consideration of these matters follows the same format, although the individual objections are addressed under one sub-heading. We then reference the Applicant's response to these objections.

AFFECTED PERSONS AND PERSONS WITH AN INTEREST IN LAND

9.8.2 A number of objectors were represented by Finns LLP. An overall WR and further representations were submitted on behalf of these objectors by Finns LLP [REP2-047, REP3-044, REP4-025, REP6-027, REP7-042 and REP9-011]. The representations included that:

- the CA and temporary possession powers sought exceed those in the public interest and that restrictions to be imposed were more extensive than necessary, including restrictions on the growing of any plant and the erection of polytunnels within the land subject to CA;
- there are discrepancies between the rights and definitions within the DCO application and the legal documentation issued to IPs;
- a condition under s123 of PA2008 has not been met;
- that the Land Rights Strategy (LRS) is inadequate and that the Applicant has been unwilling to negotiate terms outside of CA, including the absence of firm and detailed commitments within protective provisions and indemnities provided with the Deeds of Grant;
- the justification for the application route, and hence the powers sought, is unsubstantiated;
- consultation in relation to route choice and the distribution of relevant plans has been inadequate;
- the Applicant has not conducted negotiations for voluntary acquisition on the basis that CA should be a last resort; and

- the existing 132kV line, which is to be removed as part of the proposed development, should be diverted during construction to allow the replacement 400kV line to follow the existing route and reduce the need for new powers for the 400kV route.

9.8.3 A number of objectors were represented by the NFU. An overall WR and further representations were submitted on behalf of these objectors by the NFU [RR-043, REP1-005, REP2-074, REP2-075, REP3-046, REP3-047, REP4-032, REP5-052, REP5-053, REP6-028 and REP7-046]. The representations included that:

- the CA and temporary possession powers sought exceed those in the public interest and that restrictions to be imposed were more extensive than necessary, including restrictions on the growing of any plant within the land and the erection of polytunnels subject to CA;
- the LRS is inadequate and that the Applicant has been unwilling to negotiate terms outside of CA;
- there are discrepancies between the rights and definitions within the DCO application and the legal documentation issued to Interested Parties;
- the Applicant has not conducted negotiations for voluntary acquisition on the basis that CA should be a last resort;
- the Applicant has not sought to reduce the impact of the rights sought by the sensitive positioning of pylons;
- the low level of heads of terms signed at this stage is indicative of the Applicant's incorrect approach to the seeking of voluntary agreements;
- Articles 4 and 14 of the ECHR are engaged in relation to the powers sought;
- Article 4 is contravened in relation to forced labour because the scheme has given insufficient regard to effects on businesses and the labour employed;
- Article 14 is contravened because property owners in the agricultural sector have been subject to unjustifiable and differential treatment compared to others in comparable situations - this view is held on the basis that food production has been underrepresented in terms of route choices and scheme amendments compared to residential amenity amongst other things.

Colin Moss - Objection No 1

9.8.4 Colin Moss submitted a RR and made oral representations objecting to the CA of rights relating to the positioning of the proposed development in relation to his property, including effects of distress and a potential effect on the value of the property [RR-001 and EV-018].

PB Headley and Son, Richard Peter Headley; and Mr PM Headley & Mrs J Headley (including the A&M Trust) - Objection Nos 2,27 and 29

- 9.8.5 PB Headley and Son submitted a RR objecting to the CA of rights relating to the positioning of pylons [RR-003]. Richard Peter Headley submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-054]. Mr PM Headley & Mrs J Headley (including the A&M Trust) submitted a RR which also generally followed the matters included in that by Finns LLP as set out above [RR-056].
- 9.8.6 These objectors then submitted a joint WR, with others, as set out on the CAO Schedule plus the Quinlan Trust [REP2-052]. The Applicant did not include the Quinlan Trust in its submitted CAO Schedule [REP7-026]. The WR related to land at Tile Lodge Farm, Hoath and referred to pylon positioning, construction access, prohibitions on haul roads for farm traffic and severance amongst other things.
- 9.8.7 They were represented by Finn's LLP and the NFU at various stages during the Examination. They also submitted other representations during the Examination, which are identified on the CAO Schedule, and these included concerns relating to rights for planting [REP4-025, Q2.7.14]. They also made oral representations at various hearings [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objections were progressing with the objectors [REP7-026].

Karen Isaac - Objection No 3

- 9.8.8 Karen Isaac, an objector not in the BoR, submitted a RR relating to the positioning of the proposed development in relation to her property, including the effects of nuisance [RR-004].

Nethergong Camping (Christine Jenkins) - Objection No 4

- 9.8.9 Nethergong Camping (Christine Jenkins), a Category 3 person under s44 of PA2008, submitted a RR and made oral and further representations relating to the positioning of the proposed development in relation to her property, including the effects of business loss, flood risk [RR-006, AS-008, EV-010, EV-018, REP2-089, REP2-090, REP4-029 and REP4-030].

Thanet Offshore Wind Ltd - Objection No 5

- 9.8.10 The RR and WR [RR-007 and REP2-095] made by this objector were withdrawn during the Examination [REP9-010].

Chris Barnes and Vivienne Lorimer - Objection Nos 6 and 7

- 9.8.11 Chris Barnes and Vivienne Lorimer, objectors not in the BoR, submitted RRs which included potential effects on property values [RR-009 and RR-012].

James Bulpitt - Objection No 9

- 9.8.12 James Bulpitt submitted a RR [RR-018] including the impact of CA and temporary possession powers on his business [RR-017].

Barrie J Boylan and Georgina Selfe - Objection No 10

- 9.8.13 Barrie J Boylan submitted a RR and other representations which included the impact of CA and temporary possession powers on Kemberland Ancient Woodland as set out in the CAO Schedule.

Siobhan Robinson - Objection No 11

- 9.8.14 Siobhan Robinson submitted a RR in relation to disturbance to rights of way and access [RR-024].

Michael Fraser Bullen and Susan Tarrant, Foxhill Stables - Objection Nos 12 and 13

- 9.8.15 Michael Fraser Bullen submitted a RR and WRs [RR-025, REP2-085 and REP2-086] and made oral representations [EV-027 to EV-030] in relation to the CA of rights and temporary possession powers relating to the positioning of the proposed development and the effect of these rights on his livery yard business. Mr Bullen also drew our attention to a petition against the proposed development. Susan Tarrant, Foxhill Stables submitted a RR which generally followed the concerns set out by Mr Bullen [RR-026].

Philip Thomas - Objection No 15

- 9.8.16 Philip Thomas submitted a RR [RR-035] which included objections in relation to personal and business land use and property value.

G.G. Baxter (Holdings) Limited and Baxter Farms Limited - Objection Nos 16 and 17

- 9.8.17 G.G. Baxter (Holdings) Limited submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-041]. Baxter Farms Limited submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-042]. The objectors then submitted a joint WR which included questioning the route of permanent access to Pylon PC33 which follows field boundaries [REP2-050]. The objectors were represented by Finns LLP and NFU and oral representations were made on their behalf [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant

reported, towards the end of the Examination, on how matters relating to the objections were progressing with the objectors [REP7-026].

David Botting - Objection No 18

- 9.8.18 David Botting submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-044]. The objector then submitted a WR which included questions relating to the need for access through a farmyard due to a less sensitive access being available in terms of health, safety and security, and impact on the use of shooting ponds [REP2-057]. The objector was represented by Finns LLP and the NFU and oral representations were made on its behalf [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Robert Brett and Sons Limited - Objection No 19

- 9.8.19 Robert Brett and Sons Limited submitted a RR [RR-046] and a WR [REP2-047] which generally followed the matters included in those by Finns LLP as set out above. The objector was represented by Finns LLP and oral representations were made on its behalf [EV-019, EV-021 to EV-023, EV-047 to EV-049 and EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Chandler and Dunn Limited - Objection No 20

- 9.8.20 Chandler and Dunn Limited submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-047]. The objector then submitted a WR which referred to matters covered earlier in this chapter [REP2-051]. The objector was represented by Finns LLP and the NFU and oral representations were made on its behalf [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Goldstone Farms - Objection No 21

- 9.8.21 Goldstone Farms submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-048]. The objector was represented by Finns LLP and made oral representations [EV-019, EV-021 to EV-023, EV-047 to EV-049 and EV-061 to EV-063].

The King's School Canterbury - Objection No 22

- 9.8.22 The King's School Canterbury submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-049]. The objector then submitted a WR which included impact on land owned by the objector which has been zoned for future development and security issues, particularly during construction [REP2-079]. The

objector was represented by BTF Partnership and made oral representations [EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Dyas Farms (1988) Ltd and Nicola Dyas - Objection Nos 23 and 50

- 9.8.23 Dyas Farms (1988) Ltd submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-050]. The objector then submitted a WR jointly with Nicola Dyas which included impacts of the rights to position pylons and use of an access through the farm [REP2-049]. The objectors were represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-047 to EV-049 and EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objections were progressing with the objectors [REP7-026].

David John Fuller and Simone Amanda Fuller and FA Fuller and Son - Objection Nos 24 and 45

- 9.8.24 David John Fuller and Simone Amanda Fuller submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-051]. The objector then submitted a WR jointly with FA Fuller and Son which included security, damage and value concerns in respect of the use of a permanent access through the farm [REP2-054]. The objectors were represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objections were progressing with the objectors [REP7-026].

Pippa Southorn - Objection No 25

- 9.8.25 Pippa Southorn submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-052]. The objector then submitted a WR through DH Clifton jointly with the King's School Canterbury as set out above [REP2-079]. The objector was represented by BTF Partnership and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Powell-Cotton Settled Estates - Objection No 28

- 9.8.26 Powell-Cotton Settled Estates submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-055]. The objector then submitted a joint WR with others, as set out above [REP2-079]. The Applicant reported, towards the end of the

Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Quex Park Estates Company Limited - Objection No 30

- 9.8.27 Quex Park Estates Company Limited submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-057]. The objector then submitted a joint WR with others, as set out above [REP2-079]. The objector was represented by the NFU, who referred to access rights and the absence of compensation and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Derek Richard Lawrence, Richard Julian Lawrence, Darren Conway Lawrence and Gary Robert Lawrence - Objection No 31

- 9.8.28 Derek Richard Lawrence, Richard Julian Lawrence, Darren Conway Lawrence and Gary Robert Lawrence submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-059]. The objector then submitted WRs which generally followed the matters included in those by Finns LLP as set out above. The objector was represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

FW Mansfield and Son - Objection No 32

- 9.8.29 FW Mansfield and Son submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-060]. The objector then submitted a WR which included the effects of the rights sought on specialist cropping, on the letting of land to an outdoor sports company, on retained land with development value and on the rental value of commercial units [REP2-055]. The objector was represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-023, EV-047 to EV-049 and EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

John Carlos Orr and Natalie Jane Orr - Objection No 33

- 9.8.30 Mr and Mrs JC Orr submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-061]. The objector then submitted WRs which generally followed the matters included in those by Finns LLP as set out above. The objector was represented by Finns LLP and made oral representations [EV-019, EV-021 to EV-023, EV-047 to EV-049 and EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how

matters relating to the objection were progressing with the objectors [REP7-026].

Ross Patrick O'Brien and David O'Brien - Objection No 34

- 9.8.31 Ross Patrick O'Brien and David O'Brien submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-063]. The objector then submitted representations which generally followed the matters included in those by Finns LLP as set out above. The objector was represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Philip Michael Brook Smith and William Lawrence Greenwell Swan as trustees of the Michael Smith Family Trust 1988 and Monkton Court Farm - Objection No 35

- 9.8.32 Philip Michael Brook Smith and William Lawrence Greenwell Swan as trustees of the Michael Smith Family Trust 1988 submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-064]. The objector then submitted WRs [REP2-047 and REP2-048] which included severance issues. The objector was represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

St Nicholas Court Farms - Objection No 36

- 9.8.33 St Nicholas Court Farms submitted a RR which generally followed the matters included in that by Finns LLP as set out above [RR-066]. The objector then submitted other representations which generally followed the matters included in those by Finns LLP as set out above. The objector was represented by Finns and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-077]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

BB Stephens and Son - Objection No 37

- 9.8.34 BB Stephens and Son submitted a RR and WR which generally followed the matters included in that by Finns LLP as set out above [RR-069 and REP2-053]. The objector is also concerned in relation to the alignment of the rights sought and the proximity of access routes to buildings, including those which have development potential [REP6-027]. The objector is represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-023, EV-047 to EV-049

and EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Michael Paul Wilkinson and Chislet Court Farms - Objection Nos 38 and 46

- 9.8.35 Michael Paul Wilkinson submitted a RR, a joint WR with Chislet Court Farms and other representations which generally followed the matters included in that by Finns LLP as set out above [RR-070 and REP2-056]. Chislet Court Farms also raised concerns relating to pylon location associated consultation and negotiation [REP6-027]. The objectors were represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-073]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

David James Snell - Objection No 39

- 9.8.36 David James Snell submitted a RR and other representations which generally followed the matters included in that by Finns LLP as set out above [RR-071]. The objector was represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-073]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

The Master, Fellows And Scholars Of The College Of Saint John The Evangelist In The University Of Cambridge - Objection No 40

- 9.8.37 The Master, Fellows And Scholars Of The College Of Saint John The Evangelist In The University Of Cambridge submitted a WR which included objections on matters of consultation, the lack of a compelling case for CA, access demands and severance [RR-072]. The objector then submitted representations that raised matters dealt with elsewhere in this report, but included economic impact on the business, including vehicle damage and security, of Dyas Farm Ltd [REP2-092, Q1.9.7 and REP4-035]. The objector was represented by Savills and made oral representations [EV-061 to EV-063]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Mr NS & Mrs DM Daw - Objection No 41

- 9.8.38 Mr NS & Mrs DM Daw submitted a RR and other representations which generally followed the matters included in that by Finns LLP as set out above [RR-073].

**Brian Edward Lawrence and Marilyn Irene Lawrence -
Objection No 42**

- 9.8.39 Brian Edward Lawrence and Marilyn Irene Lawrence submitted a RR and other representations which generally followed the matters included in that by Finns LLP as set out above [RR-074]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Edward Batchelor, Janet Freeda Batchelor and Robert John Batchelor and J E Batchelor & Partners - Objection Nos 43 and 44

- 9.8.40 Edward Batchelor, Janet Freeda Batchelor and Robert John Batchelor submitted a joint WR with J E Batchelor & Partners which included damage due to maintenance access, severance due to temporary diversions, and the taking into account of change requests [REP2-058]. The objectors were represented by Finns LLP and the NFU and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-073] The Applicant reported, towards the end of the Examination, on how matters relating to the objections were progressing with the objectors [REP7-026].

Church Commissioners for England - Objection No 47

- 9.8.41 The Church Commissioners for England submitted a WR and other representations [REP2-093 and REP4-036]. These included the effect on land value from the route chosen, the lack of socio-economic impact assessment in route choice, severance and injurious affection and inadequacies in the LRS. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Paul Anthony Mansfield - Objection No 48

- 9.8.42 Paul Anthony Mansfield submitted a WR and other representations which generally followed the matters included in that by Finns LLP as set out above [REP2-047]. The objector was represented by Finns LLP and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-073]. The Applicant reported, towards the end of the Examination, on how matters relating to the objection were progressing with the objector [REP7-026].

Margaret Cash - Objection No 49

- 9.8.43 The Applicant's CAO Schedule did not refer to any representations by this objector, but referred to the fact that the objector did not wish to pursue a voluntary agreement.

Hatfield Farms, DM Botting Partnership, DJ Snell and Ian Smith - Objection Nos 51, 52, 53 and 54

- 9.8.44 Hatfield Farms, DM Botting Partnership, DJ Snell and Ian Smith were represented by the NFU, who made a WR [REP2-074] and other representations, together with Finns LLP and the NFU on their behalf and made oral representations [EV-019, EV-021 to EV-024, EV-035 to EV-038, EV-047 to EV-049, EV-061 to EV-063 and EV-071 to EV-073]. The Applicant reported, towards the end of the Examination, on how matters relating to these objections were progressing with the objectors [REP7-026].

Robin Hood Events Ltd - Objection No 55

- 9.8.45 Robin Hood Events Ltd submitted a representation stating that the rights sought for the positioning of a pylon would effectively put them out of business [REP6-031].

Michael Cash - Objection No 56

- 9.8.46 The Applicant's CAO Schedule did not refer to any representations by this objector and stated that no specific concerns of this landowner are currently known. The objector did however approach the Applicant before DL9 expressing concern that a pylon would be positioned on his land and referring to noise and health risks [REP9-002].

APPLICANT'S RESPONSE TO OBJECTIONS

- 9.8.47 The Applicant has responded to the overall objections by Finns LLP and the NFU on behalf of those they represent and individual WRs [REP3-013] and has added further responses as the examination progressed [REP6-009 and REP6-010].

STATUTORY UNDERTAKERS REPRESENTATIONS UNDER SECTIONS 127 AND 138 OF THE PLANNING ACT 2008

South East Water - Objection No 8

- 9.8.48 South East Water (SEW) submitted various representations during the course of the Examination in relation to the CA powers sought by the Applicant and the protective provisions sought by SEW, and also attended the CAH. These representations were not withdrawn before the end of the Examination. The representations are referenced on the CAO Schedule, in Appendix D of our report, as are the plots affected.
- 9.8.49 In its WR, SEW strongly objects to the proposed CA of rights over multiple parts of its land which has been acquired in connection with the Broad Oak reservoir proposal [REP2-099]. These rights include permanent Class 1 rights, which can also be used to place restrictions on the land. This land is required for SEW to continue to be able to carry out its statutory functions in relation to the provision of the reservoir proposal. This is in terms of mitigation for the reservoir, including a Water Framework Directive compliant diversion of a

watercourse, over which the reservoir proposal would lie, together with biodiversity and landscape matters. The CA of these rights would significantly prejudice SEW's ability to deliver the reservoir. Furthermore, at application stage, there were no protective provisions or other provisions included within the application DCO which sought to address this issue.

- 9.8.50 In addition to the specific concerns raised in relation to the reservoir proposal, SEW considers that the Secretary of State cannot allow the DCO to be made without amendment. This is because the test in s127 of PA2008 cannot be satisfied in connection with SEW's wider interests. The CA of rights over SEW's land would result in serious detriment to SEW's statutory function if sufficient protections are not in place. Furthermore, SEW does not have any other land available to it which could be used to avoid such detriment.
- 9.8.51 At the end of the Examination, this representation had not been withdrawn, and indeed SEW had made many further representations in support of its objection [REP9-004]. In its final written submission, SEW's position was that there were two insuperable obstacles to a decision approving the proposed CA of the extensive rights sought over SEW's land [REP8-024].
- 9.8.52 These were that firstly, there is no compelling case in the public interest for the acquisition of rights over the reservoir land if those rights would prevent the reservoir proposal coming forward [REP8-024, para 18]. The need that the Applicant relies upon to justify such acquisition is capable of being met by alternatives to the proposed development that would involve much less harm to private and public interests and would be entirely consistent with the NPS. It is in the public interest that both the reservoir proposal and the proposed development be secured and come forward. This would only be possible if an alternative is accepted and amendments made to the CA powers sought [REP2-099, para 139]. There is no obstacle to delivery of the alternatives. The Applicant cannot therefore satisfy s122(3) of PA2008, and powers of CA should not be granted.
- 9.8.53 Secondly, s127 of PA2008 provides that land owned by Statutory Undertakers, such as SEW, for their statutory purpose is to be afforded additional protection from CA [REP2-099, para 141]. The new rights that the Applicant seeks to create over land that SEW owns, and require for the purposes of the reservoir proposal, cannot be created without serious detriment to the carrying on of SEW's statutory undertaking. The tests in s127(6) of PA2008, in relation to the CA of these rights, have therefore not been met in this case [REP8-024, para 19].
- 9.8.54 SEW's position that the proposed development would prevent the reservoir proposal coming forward has been considered in detail in Chapter 6 of this report. The detailed matters in support of SEW's position will not be repeated here. At the second ISH on the reservoir

proposal, SEW provided an overview of its position to set the context for these detailed matters as follows [REP5-040].

- 9.8.55 SEW understands that there is no dispute that s127 is engaged and that its requirements have to be met. The Applicant's case is that, for the most part, the rights would cause minimal interference with SEW's undertaking [REP2-032, para 4.6]. SEW considers however that insufficient explanation has been offered as to which items of interference are being referred to. It also considers that the Applicant implicitly acknowledges that, in some respects, interference is more than minimal. The Applicant however has again not explained the extent of the interference when it is considered to be more than minimal.
- 9.8.56 SEW is of the view that there is no statutory definition of what is meant by 'serious' in the context of PA2008 and no authority on the point. The word should therefore be given its ordinary meaning, namely 'important' or 'significant' [REP6-040]. SEW notes that, on this basis, something would be serious if it was important or significant.
- 9.8.57 The detriment under s127 is to the carrying on of SEW's undertaking, and thus the issue of whether any detriment is important or significant has to be judged having regard to how SEW conducts its business. This needs to take account of how it fulfils the duties and standards that apply to it as a Statutory Undertaker and how it is funded. The assessment of whether serious detriment would arise also needs to consider the combined effects of all of the factors that SEW has identified on the carrying on of its undertaking in its WR [REP2-099]. In other words, the decision-maker cannot consider individual issues in isolation.
- 9.8.58 SEW accepts that the relevant factors, and their individual significance, will depend to some extent on the conclusions that the Panel draws as to the interaction between the reservoir proposal and the proposed development. This will be based on the Panel's evaluation of the evidence it has heard.
- 9.8.59 From this, there is a range of possible conclusions. These are from the CA powers sought being likely to render the reservoir proposal undeliverable in an acceptable form (whether for environmental, planning or viability reasons, or a combination of all three), to restrictions on flexibility of design and additional cost (ie the Applicant's assessment). These effects then need to be considered in terms of causing the detriment which falls to be considered under s127 of PA2008. It is SEW's position that, even on the Applicant's assessment of the interaction between the reservoir proposal and the proposed development, detriment is serious. SEW's case is that the Applicant's assessment is so over-optimistic, in terms of the low level of interaction, as to go beyond what is plausible. The extent of the detriment is therefore necessarily more extensive than that shown from the Applicant's assessment.

9.8.60 At the CAH, SEW gave the examples of how, notwithstanding the nature of any physical interactions between the proposed development and the reservoir proposal, the rights being sought by the Applicant would prevent SEW from delivering the reservoir [REP6-038, REP6-052, REP6-053 and REP6-054]. For example, the Class 1(e) rights sought, a sub-division of Class 1, would prevent SEW from erecting any structure or allowing any tree to grow that may interfere with the Applicant's access [REP6-042]. They would also prevent SEW from doing anything that could cause the level of the surface, ground cover or composition to be altered. Even Class 2 access rights would prevent SEW from carrying out any actions on its land, such as planting or constructing the dam wall, which would obstruct the Applicant's access rights.

9.8.61 SEW also explained its position in relation to the consideration of alternatives under the DCLG CA Guidance³¹² [REP6-038, para 17]. It was of the opinion that, in order to demonstrate that the proposed CA was proportionate, it was necessary to consider whether the underlying public interest objective could be achieved in a way that gave rise to less harm to the private interests affected. If this could be done, then this would obviously be material to whether the particular CA powers being sought were proportionate and thus justified in the public interest.

9.8.62 SEW's case on alternatives is as follows [REP6-038, para 18]:

- The consideration of alternatives to the CA of rights over SEW land, through modification of the proposed development, has not adequately been explored by the Applicant. Had any of SEW's preferred alternatives been adopted, it would have been possible for the CA of rights over SEW's land to have been avoided. In those circumstances, SEW would have entered into a voluntary sale of the rights that the Applicant would have needed to carry out the proposed development.
- Some limited acquisition of agricultural land in the ownership of others would have been required, but nothing like as much or with as significant an impact on either private or public interests.
- All affected landowners are already engaged with the Applicant, and it would simply be an alteration to the way in which the DCO affects their land interests. Moreover, SEW is of the opinion that most of the interests involved could be acquired by voluntary agreement.

9.8.63 SEW also explained its position in relation to the proportionality of the rights that are sought [REP6-038, paras 19 to 24]. This is that the breadth of these rights over SEW's land would be such as to preclude the implementation of the river diversion and fish pass. This would be in terms of SEW's position, as set out in Chapter 6 of this report, on:

³¹² Guidance related to procedures for the compulsory acquisition of land: DCLG: 2013

engineering and construction; ecology and biodiversity; landscape, visual impact and amenity; and other interactions. It is therefore clear to SEW that the CA rights sought would be incompatible with what SEW would need to achieve to deliver the reservoir proposal.

- 9.8.64 SEW understands that the Applicant's case is that both schemes can be implemented, even though the implementation of the reservoir proposal would directly contravene the rights over land the Applicant seeks to acquire in terms of the above interactions [REP6-038, para 21]. The Applicant's position must therefore be that it can implement and maintain the proposed development without the full breadth of the CA rights sought over all of the land shown on the Land Plans. SEW therefore finds it hard to see how it can then be said that the CA rights to be acquired would be no more than is reasonably necessary for the purposes of the development.
- 9.8.65 SEW also considers that it would be open to the Secretary of State to conclude that development consent should be granted, but that the CA rights should not be included because they had not all been shown to be necessary for the purposes of the proposed development [REP6-038, para 24].
- 9.8.66 SEW's position is that, if the seeking of CA powers continues without any amendment to the route and/ or the use of undergrounding in accordance with the SEW alternatives, the effect of the CA powers will be that the reservoir proposal cannot proceed [REP2-099, para 9]. The Applicant has not demonstrated how the CA powers sought can be included within the scope of the DCO without giving rise to significant prejudice to SEW's ability to deliver the proposed reservoir. At the time of its WR, SEW also added that there were no protective provisions or other provisions included within the proposed DCO which sought to address the issue. Despite negotiations during the period of the Examination, there were still differences between the parties on this matter at the end of the Examination.
- 9.8.67 SEW's position is that, when considering the conditions that must be satisfied to justify CA, it cannot be said that there is a compelling case in the public interest for rights to be acquired compulsorily [REP2-099, para 11]. SEW is happy to provide rights over its reservoir land voluntarily if the amendments to the proposed development, which it sees as relatively minor, set out in the SEW representations on alternatives are accepted.

The Applicant's response to the SEW Objection No 8

- 9.8.68 Given the need for the proposed development, the Applicant considers that there is a compelling case in the public interest for the inclusion of the CA powers within the DCO [REP3-019 and REP8-004]. The proposed development could co-exist with the reservoir proposal. The proposed development also would strike an appropriate balance between accommodating the reservoir proposal and the effect of the route on the residents of Broad Oak.

- 9.8.69 The Applicant accepts that s127 of PA2008 is engaged [REP8-018, para 9.1]. Here, under s127(6), the rights sought over the SEW land held for the purposes of the reservoir proposal can only be acquired if there would be no serious detriment to the carrying on of the undertaking.
- 9.8.70 The Applicant is of the view that the addition of the word 'serious' means that the detriment has to be something which goes well beyond just 'detriment'. There is no serious detriment in this case because:
- there is currently no undertaking being 'carried on' by SEW on the land, the only detriment claimed is, therefore, to a future proposal for development that would become part of SEW's undertaking;
 - the reservoir proposal has very limited planning status at a top water level of 32.5m AOD within the Water Resources Management Plan, as set out in Chapter 6 of this report, and no planning status at 36m AOD;
 - the reservoir proposal has no funding and, in any event, has a target date for construction of 2033 in the WRMP14;
 - the reservoir proposal could be developed with the proposed development, including the CA of rights over SEW land as sought in the DCO;
 - there is no physical interaction between the reservoir proposal itself, ie the operational development, and the proposed development, only physical interaction between the operational development and the proposed development is in relation to the ecological mitigation for the diversion of the river;
 - the proposed mitigation for the Sarre Penn river could be developed and implemented with the CA powers sought over SEW land;
 - other land is available to SEW that would allow it to provide adequate ecological mitigation for the diversion of the Sarre Penn river;
 - the Applicant has offered to move Pylons PC8 and PC10 within the limits of deviation to reduce any interaction between those pylons and the proposed mitigation for the Sarre Penn diversion and thereby reduce the effect of the rights sought; and
 - it is accepted that the CA powers sought over SEW land would require some design changes to SEW's proposed mitigation for the Sarre Penn diversion, and that these would have some cost, but in the context of the uncertainty about whether the reservoir proposal will ever be developed, these do not amount to 'serious' detriment [REP8-018, paras 9.3.1 to 9.3.10].
- 9.8.71 It is therefore the Applicant's position that the Secretary of State can be satisfied that the tests of s127 of PA2008 have been met and that the CA of rights over SEW's Statutory Undertakers' land may be included in the DCO [REP2-032]. It is also the Applicant's position that the Secretary of State can be satisfied that the power, for the Applicant and UKPN, to extinguish the rights of, remove or reposition apparatus belonging to SEW is necessary for the purpose of carrying

out the proposed development. The test of s138 of PA2008 has therefore been met.

Network Rail Infrastructure Limited - Objection No 14

9.8.72 Network Rail Infrastructure Limited (NRIL) submitted various representations during the course of the Examination in relation to the CA powers sought by the Applicant and the protective provisions sought by NRIL and also attended the CAH. These representations were not withdrawn before the end of the Examination. The representations are referenced on the CAO Schedule, in Appendix D of this report, as are the plots affected.

9.8.73 At the end of the Examination, NRIL's position remained as it had set out at DL7 [REP7-045]. This position was that the protective provisions that it had put forward, relating to the CA powers sought, were required to prevent detriment to the safety of the railway and NRIL's ability to carry out its statutory functions.

The Applicant's response to the Network Rail Infrastructure Limited - Objection No 14

9.8.74 The works which would be carried out over NRIL's land include the construction and future maintenance of a new overhead line together with such associated work that may be necessary for the construction and maintenance of the overhead line [REP2-036]. No land owned by NRIL needs to be compulsorily acquired; only rights over land to carry out the above works. Therefore, s127(3) and (4) of PA2008 are not engaged.

9.8.75 The Applicant considers that there would be no serious detriment to NRIL's undertaking if it, or UKPN, were to acquire these rights and interests sought [REP2-036]. The criteria in s127(5) of PA2008 would thus be satisfied. This is because the rights acquired would co-exist within the plots affected alongside those of NRIL and, for the most part, the rights would cause minimal interference to NRIL's undertaking.

9.8.76 Furthermore, the Applicant, or where appropriate UKPN, would operate under the protective provisions in the rDCO in order to cause as little disruption as practicable during the maintenance or emergency works [REP2-036]. Other than during construction, the only interference would be maintenance or emergency works to equipment. As a consequence of all of the above points, the Applicant does not consider it necessary to replace the land over which interests are required.

9.8.77 Under s138 of PA2008, the power for the Applicant to extinguish the rights of, or remove or reposition the apparatus belonging to, NRIL is necessary because the works associated with the proposed development could not be completed without such power [REP2-036]. The criteria in s138 of PA2008 would thus be satisfied.

- 9.8.78 At DL8, the Applicant reported an outstanding matter that, in Provision 30(4), NRIL seeks to include the amendment of the timing of works within the definition of protective works [REP8-012].
- 9.8.79 At DL7, NRIL had however submitted other amendments to the Applicant's protective provisions as follows [REP7-045]. These included to require the consent of NRIL, which should not be unreasonably withheld, before the undertaker can exercise various powers under the DCO, that the means and prevention of electromagnetic interference (EMI) must be selected in the reasonable discretion of NRIL, the extension of indemnity to EMI matters, the appointment of an arbitrator for EMI matters, matters relating to the payment of NRIL costs by the undertaker and indemnification, and notification of any application to transfer the benefit of the Order. The Applicant has not accepted that these amendments should be made to the dDCO.

Southern Gas Networks plc - Objection No 26

- 9.8.80 Southern Gas Networks plc (SGN) made a RR to the Examination [RR-053]. This states that SGN's agreement to the proposed development can only be provided if the Applicant can offer assurances that the safety and integrity of SGN's gas network will not be compromised. The RR was not withdrawn before the end of the Examination, and the plots affected are referenced on the CAO Schedule, in Appendix D of this report.

The Applicant's response to the Southern Gas Networks plc - Objection No 26

- 9.8.81 At the end of the Examination, the Applicant's SoCG with SGN remained in draft form, although it had been exchanged between the parties [REP2-030]. The exchanged draft SoCG recorded that there were no matters where either party disagreed however both were currently waiting on information from each other. At DL8, the Applicant advised that SGN had not raised any objections to the form of the protective provisions included in the DCO [REP8-012]. The Applicant was waiting to execute a separate legal agreement with SGN, and there are no matters outstanding. The Applicant understands that, once the agreement is executed, SGN will withdraw its RR.

ENVIRONMENT AGENCY

- 9.8.82 The EA submitted a RR relating to its land interests [RR-022] indicating that heads of terms had been signed, and the SoCG with the Applicant [REP8-013] indicates that discussions between the parties are continuing. Land interests are not indicated as an outstanding matter between the parties.

SOUTHERN WATER SERVICES LIMITED

- 9.8.83 Southern Water Services Limited made a representation concerning its apparatus [AS-003]. Its draft Statement of Common Ground (SoCG) with the Applicant, submitted at DL2, records that a separate agreement to address its concerns had not yet been agreed [REP2-029]. Southern Water also advised of outstanding issues regarding protective provisions at DL6 [REP6-029]. The Applicant has advised that the separate agreement was not in place at DL7, Southern Water's concerns regarding its apparatus remained and that the position would be confirmed to the Secretary of State in due course [REP7-008].

NEW LINE NETWORKS

- 9.8.84 New Line Networks submitted a RR seeking to secure shared access with the Applicant on a farm track which would be subject to the CA of rights and powers of temporary possession [RR-027]. During the Examination, the parties reached agreement in relation to this access route, and the RR was withdrawn [REP7-053].

9.9 EXAMINING AUTHORITY CONSIDERATIONS

THE GENERAL CASE FOR THE GRANT OF COMPULSORY ACQUISITION POWERS AND RELATED MATTERS

Panel's approach

- 9.9.1 The Panel's approach to the question of whether and what CA powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of PA2008, notably s122 and s123, the Guidance³¹³, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 9.9.2 There are representations from Statutory Undertakers which have not been withdrawn and, therefore, s127 of PA2008 is engaged in the consideration of the application. There are also relevant Statutory Undertaker rights and apparatus on land that is the subject of CA of new rights under the dDCO. Section 138 of PA2008 is, therefore, also engaged, and we have considered the application, and representations, accordingly.
- 9.9.3 The Panel understands, however, that the dDCO deals with the development, itself, and CA powers. The case for CA powers cannot properly be considered unless, and until, the Panel has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.

³¹³ Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

- 9.9.4 The Panel has shown in the conclusions to the preceding Chapter that it has reached the view that development consent should be granted. The question therefore that we address here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.
- 9.9.5 In these conclusions, we shall first consider a number of general matters relating to the Applicant's case for CA which are also pertinent to points raised by a number of objectors. We shall then consider the case for objectors before concluding on Statutory Undertakers' land and apparatus, special category land, Crown land, the tests set out in s122(2) and s122(3) and Human Rights issues.
- 9.9.6 Although we shall specifically refer to objections raised by APs, we appreciate that this represents only a proportion of the 1677 [REP8-005 and REP8-006] or so parcels of land that would be affected. Even though a specific objection may not have been raised in relation to a particular plot of land, we have nevertheless applied the relevant tests to the whole of the land that would be subject to powers of CA, or temporary possession, in reaching our overall conclusions.

Associated development

- 9.9.7 Section 122(2) of PA2008 sets out the purposes for which CA may be authorised. The DCLG Guidance³¹⁴ explains that, in the light of s122, applicants must be prepared to justify their proposals for the CA of any land to the satisfaction of the Secretary of State.
- 9.9.8 Section 115 of PA2008 provides that, in addition to the development for which development consent is required under Part 3 of PA2008 (the principal development), consent may also be granted for associated development. PA2008 defines Associated Development as development which is associated with the principal development.
- 9.9.9 The Panel is of the view, as set out in Chapter 10 of this report, that the Associated Development in Schedule 1 of the rDCO comprises development for which development consent is sought in accordance with DCLG Guidance³¹⁵. The land required for this Associated Development can therefore, in principle, be compulsorily acquired pursuant to s122(2)(a) of PA2008. We shall consider later in this chapter whether all of the land in respect of which CA and temporary possession powers are sought is, in fact, required for the development.

³¹⁴ Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

³¹⁵ Planning Act 2008 Guidance on associated development applications for major infrastructure projects (DCLG, 2013)

The public benefit

- 9.9.10 The need for new nationally significant energy infrastructure projects is recognised by NPSs EN-1 and EN-5. The NPPF acknowledges the pre-eminence of NPSs in policy terms when considering NSIPs. It is clear from the relevant NPSs that there is a national need for new electricity network infrastructure of the type that is the subject of the application.
- 9.9.11 The application sets out the need case for the proposed development [APP-129]. In Chapter 8 of this report, we have already concluded that there is an urgent need for the proposed development and we have concluded that the benefits, including this need, outweigh any harm to such an extent that development consent should be granted. In terms of CA, we rely on this conclusion that development consent should be granted. From what we have found in relation to the Nemo Link[®], we also consider that there is sufficient certainty regarding the identified need and that now is the right time to request the CA powers that are sought. All of these matters lead us to the view that there is significant public benefit to be weighed in the balance concerning the compelling case for CA.

Private loss

- 9.9.12 The Applicant has not assessed the effect upon individual APs and their private loss that would result from the exercise of compulsory powers in each case. Any private loss suffered by an individual AP may become the subject matter of a claim for compensation, with any claim determined by the Lands Chamber of the Upper Tribunal [REP8-004]. At the CAH, the Panel requested clarification of the different elements of this compensation which the Applicant then provided [REP6-009, Action No 22]. The elements relate to payments for:
- the easement, which in the absence of voluntary agreement would represent the CA rights and restrictions sought;
 - injurious affection;
 - crop loss, damage and disturbance; and
 - agent's fees.
- 9.9.13 The Applicant has also taken a number of steps to limit the exercise of compulsory powers in respect of each plot and each individual AP [REP8-004]. These steps include:
- keeping the areas of land affected to a minimum;
 - seeking wherever possible to rely on temporary possession of land rather than permanent acquisition; and
 - engaging with all persons with an interest in land affected with a view to reaching a voluntary agreement [REP7-006, Appendix B].
- 9.9.14 The process of routeing was iterative and included the consideration of a number of factors including the effect on land use, individuals, communities and the environment at each stage. At each stage in the iterative routeing process, opportunities existed for statutory

consultees and local communities to give feedback. The Applicant's change request process gave an opportunity for landowners to raise specific issues about the route of the overhead line and positioning of the pylons [APP-029 and APP-127].

- 9.9.15 The Panel considers that, for a linear project of this size with some 1677 plots affected [REP8-005 to REP8-007], this represents a proportionate approach and that to carry out an analysis on a parcel by parcel basis would be a disproportionate measure. It is clear that individuals who would be affected by the development have had an opportunity to make representations which the Applicant took into account before making a final decision on the route and plots to be included in the application.
- 9.9.16 We recognise that the proposed development has been designed so that the Order limits have been brought in as far as possible to minimise interference with private rights as set out above. The route selected would also avoid, so far as possible, interaction with residential property and non-agricultural businesses. The majority of land over which permanent rights are sought would experience only minor interference with the use of the land. This is because the majority of the rights sought would relate to the presence and occasional maintenance of overhead conductors.
- 9.9.17 A significant proportion of the land over which permanent rights are sought is in agricultural use. The owners of such land would be able to continue to use the land for this purpose once construction is completed. It is also likely that they would experience only limited interference over the lifetime of the development, as set out above.
- 9.9.18 Furthermore, the Applicant has sought to use powers of temporary possession wherever possible. The extent of any private loss has therefore been mitigated through the CA of rights only after the final details of the route have been identified within the limits of deviation (LoD) during design. All of these factors must inherently reduce the extent of the private loss experienced by those affected by CA.

Alternatives

- 9.9.19 The application Strategic Option Report, RCS, PCORCR and COR, [APP-130, APP-131, APP-132 and APP-133] give an outline of the main alternatives to the proposed development studied by the Applicant. These include alternative overhead line routes and alternatives to an overhead line solution. They also set out the main reasons for the Applicant's choice of the proposed development taking into account environmental effects, socio-economic effects and cost. This includes considering the benefits from undergrounding for each section of the study area.
- 9.9.20 Some pre-application modifications to the route were made in response to the consultation process with persons who have an interest in land (PILs) with a view to minimising land use impacts

[APP-124]. Some proposed modifications were rejected and the application also provides reasons for that.

9.9.21 The Applicant has entered into negotiations with all landowners to seek to avoid the need to compulsorily acquire the relevant interests. At the CAH, the Panel requested an update from the Applicant on these negotiations, and this was provided at DL6 [REP6-009, Appendix J]. At 24 October 2016, in respect of the Applicant, one voluntary option agreement had been exchanged out of 44 required and initiated. Heads of terms had however been signed relating to 11 of these 44 agreements. In respect of UKPN, heads of terms had been signed relating to three of the 11 required and initiated agreements.

9.9.22 CA powers are nonetheless sought where a negotiated settlement has been achieved [REP8-004]. This is because the powers provide a fall-back should the voluntary agreements fail and allow rights to be obtained through a General Vesting declaration, which would be effective even against unknown interests. CA powers are also more readily enforceable, so reducing additional risk, cost and delay. This is particularly pertinent in the context of the urgent need for the proposed development.

We therefore consider that it is reasonable to include provision authorising CA covering all the land required in the rDCO, in accordance with DCLG Guidance³¹⁶.

9.9.23 We are satisfied that the Applicant has made sufficient progress in terms of option agreements in this regard. We therefore consider that these alternatives to CA have been adequately addressed and that, even with option agreements in place, it would be appropriate to retain CA powers to secure delivery of the proposed development.

The route selected and alternative technologies

9.9.24 Kent County Council (KCC), Canterbury City Council (CCC), Dover District Council (DDC) and Thanet District Council (TDC) confirm that the Applicant engaged with them at an early pre-application stage to provide an opportunity to influence the proposed development [AoC-001]. Whilst the councils do not express a preference for any particular route, they consider that consultation with stakeholders has helped inform decisions at the following stages of project development:

- the selection of strategic options;
- the identification of route corridor options and preferred route corridor;
- the consideration of technology type and selection of pylon choice;
- the identification of the detailed route for the connection; and

³¹⁶ Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

- the location of construction compounds
- 9.9.25 This is notwithstanding the fact that KCC objects to the use of overhead lines across the entirety of the route selected and KCC and CCC are concerned about the impact of the route on the SEW reservoir proposal [REP8-014].
- 9.9.26 The Strategic Options Report considers on and off-shore connection options to transmission substations to satisfy the need for the proposed development [APP-130]. It addresses the effects of options on areas of major economic activity and local communities, amongst other things. We consider that the off-shore options would significantly reduce the need for CA. The report however found that off-shore options would incur substantially greater costs than the on-shore options due to their greater length and would have potential direct effects on a number of coastal international ecological designations. The report advises that the option which forms the basis of this application is to be taken forward as the chosen option. It is not the most economical of the options but, being of a shorter length, has less adverse effect in terms of landscape and biodiversity interests. We also consider that the shorter route would reduce the need for CA.
- 9.9.27 In terms of the technological possibilities under the chosen strategic option, the report advises that an overhead line route would be sought in the first instance. This is on the basis that underground cable or gas insulated lines would be significantly more expensive and would offer limited landscape and visual benefits [APP-130]. In terms of CA, and particularly disturbance following the acquisition of rights, we consider that any undergrounding would be far more intrusive in terms of construction than the installation of an overhead line. This, in our view, supports the preference for an overhead line in terms of CA. From all of the above, we can see no reason to disagree with the content of the Strategic Options Report.
- 9.9.28 The subsequent RCS included areas of settlement and planning policy towards development as principal constraints along the chosen strategic option [APP-131]. The areas of settlement included East and West Stourmouth, Hersden and Sturry, and lengthier routes were proposed to avoid these settlements. Route options, along the chosen strategic option, also included the removal of an existing 132kV overhead line and its associated land rights. The RCS included effects on local economic activity in terms of the proximity of corridor options to businesses, tourism facilities and other relevant receptors and the degree of potential temporary disturbance during construction or longer term operational effects on such receptors. An appraisal was carried out to identify the receptors within each corridor, to determine whether the impacts on those receptors were material to decision making and thus differentiate between options. Features of particular importance in this regard were tourist and/or recreation resources, local businesses and other forms of land use, such as agriculture.

- 9.9.29 The RCS found that none of the route options would be likely to result in a significant residual impact on economic activity. Furthermore, no material considerations in this regard were identified as part of the assessment of routes. It was however identified that there could be some impact on economic receptors such as orchards and high quality arable fields. With careful route alignment and the implementation of mitigation measures, the study considered that no material residual impacts would occur.
- 9.9.30 The study therefore recommended that economic activity was scoped out of further route appraisals. We can see no reason to disagree with this recommendation on the basis that the effect of CA would be likely to be similar across each of the options. In coming to this view, we have been mindful that areas of settlement and planning policy towards development have been included within the study as principal constraints. We consider that these are areas where there would be greater potential for CA impact, and their inclusion in the study as constraints has addressed the impact of CA in this regard.
- 9.9.31 The PCORCR considered whether the findings in the Strategic Options Report and the RCS should be modified following a more recent consultation exercise [APP-132]. Consultation responses had suggested other strategic underground and off-shore options, which we consider could reduce the effects of CA, but these would result in higher costs and environmental effects.
- 9.9.32 In terms of the RCS, consultation responses raised technical issues regarding the impact of undergrounding on agricultural practices and the impact of temporary access tracks and construction compounds. These CA related technical grounds would however not lead to any differentiation between route options. On socio-economics, the consultation responses warned of a greater effect on property, business owners and agriculture from the Southern Corridor compared to the Northern Corridor. These CA related socio-economic grounds would seem to lead to some differentiation between route options, and favour the Northern Corridor which was subsequently chosen. We agree that the consultation responses have been taken into account in the route selection process where possible and indeed, in terms of CA related matters, support the Northern Corridor choice that was made.
- 9.9.33 The COR reported the findings of the Pylon Designs Options Report [APP-134] which considered the type of pylon to use for the proposed development and whether underground solutions were appropriate for any parts of the chosen corridor and recommended an alignment [APP-133]. The report took into account the potential impact on horticulture and agricultural land. This included loss of crop production in conjunction with the Best and Most Versatile grade of the land concerned. The land take effects on this land were considered to be minor given the small quantum of land lost relative to the wider study area. The report also took into account a Draft Canterbury District Local Plan (2013) strategic allocation site to the south of Hersden amongst other things. We can see no reasons to disagree with the

findings and recommendation of the COR in respect of CA related matters.

- 9.9.34 From all of the above, the Panel concludes that all reasonable re-routeing options have been fully considered and discussed through the pre-application and consultation process. The use of alternative technologies, including subsea and gas insulated line, have also been considered and discounted.
- 9.9.35 We are satisfied that the Applicant has explored all reasonable alternatives to CA in terms of voluntary option agreements for the land rights required for the proposed development. We are also satisfied that the Applicant has sought to use powers of temporary use, where appropriate, rather than CA of land or rights.
- 9.9.36 The Panel therefore concludes that the Applicant has explored all reasonable alternatives to CA, including modifications to the scheme.

Temporary possession

- 9.9.37 In some instances, temporary possession has been sought as an alternative to CA. The rDCO contains powers for temporary possession which we consider are appropriate for inclusion to support the delivery of the scheme in respect of all plots noted for temporary possession in the revised Land Plans and BoR.
- 9.9.38 These powers are not CA powers and accordingly the tests under s122 and s123 of PA2008 are not applicable. However, the request for the power in order to enable the proposed development to be implemented and maintained must be justified. The inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 9.9.39 We are satisfied that the temporary possession powers sought are needed both to facilitate implementation of the proposed development and to maintain it and that adequate compensation provisions are in place in the rDCO.

Conclusion on the general case for compulsory acquisition and related matters

- 9.9.40 From all of the above, we conclude that the Applicant has made a case sufficient to justify its general request for CA and related powers. We now move on to consider whether there are specific matters relating to objections, Special Category and Crown land and the Human Rights 1998 and Equality 2010 Acts that would outweigh our finding on the general case in any regard.

THE EXA'S CONSIDERATION OF OBJECTIONS BY AFFECTED PERSONS

Introduction

- 9.9.41 Having concluded on the Applicant's general case for CA and related powers, we now turn to consider individual objections made in relation to specific plots and the rights and powers sought. We then consider whether these objections are sufficient to outweigh our finding on the general case in respect of these plots.
- 9.9.42 The Panel has considered all the objections received. Many of the issues raised by objectors have also been considered in earlier parts of this report when considering the planning issues arising in relation to the proposed development. The objections are considered here in the context of the application for the grant of CA powers and for the grant of powers of temporary possession.
- 9.9.43 In relation to the CA objections, the Panel has examined them against the tests set out in s122 and s123 of PA2008, having regard to the CA guidance³¹⁷ and with regard to the provisions of the Human Rights Act 1998. We have also considered objections to the application for powers of temporary possession under Articles 28, 29 and 30 of the rDCO and by those who may be able to make a claim under section 10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, we have had regard to the Human Rights Act in considering the application for the grant of powers of temporary possession and also the need and justification for such powers. There are plots where both CA and temporary possession powers are sought. In those instances, the temporary possession powers generally relate to the UKPN works.
- 9.9.44 In considering these objections, we have taken into account the CAO Schedule provided by the Applicant at the end of the Examination which details the nature of the objection and the plots concerned [REP7-026]. We have however amended various entries in this schedule to accord with the details of those parties objecting and the plot details shown in the final Examination BoR [REP8-005, REP8-006 and REP8-007]. Our amended schedule is at Appendix D of our report.

Grouped objections

- 9.9.45 We have considered the representations made by Finns LLP and NFU as follows.
- 9.9.46 In terms of excessive CA and temporary possession powers, we have already found that the Applicant has made a case sufficient to justify its general request for CA and related powers. The BoR describes the rights and powers sought, in terms of classes as we have already set

³¹⁷ Guidance related to procedures for compulsory acquisition of land DCLG, September 2013

out. We are satisfied that these are limited to those which are necessary for the authorised development, and therefore only rights and powers which would be necessary for the development are authorised by the rDCO. Using Class 1(e) as an example, the right to restrict what could be done on the land is limited to the prevention of interference with, or damage to, the authorised development. For overhead conductors, we have not seen anything that identifies any necessity to restrict planting below the conductors apart from in relation to safety clearances or for the maintenance of cables, which would not be a frequent occurrence. It would however be for the Applicant to determine planting that could take place and compensation would be payable for the rights and restrictions sought.

- 9.9.47 In terms of discrepancies between the rights and definitions within the DCO application and the legal documentation issued to IPs, the Applicant is correctly seeking voluntary agreements as an alternative to CA. There is nothing to suggest that the seeking of voluntary agreements should be limited to the land sought under CA, indeed there may be situations where an agreement relating to a wider area could present flexibility for the benefit of both parties. We therefore do not consider that the seeking of voluntary agreements which are different from the CA sought is a reason not to grant the powers sought.
- 9.9.48 We are satisfied that a condition under s123 of PA2008 has been met in that the application for the Order included a request for CA.
- 9.9.49 In terms of the Applicant's LRS, we are satisfied that this is a document which it uses nationally, and we have seen nothing to suggest that it is unreasonable to use in this case. The LRS is part of the seeking of voluntary agreements, and the requirements to consider alternatives outside of CA do not specify how voluntary agreements should be sought. It is therefore for the parties to negotiate to a level of detail that they see fit.
- 9.9.50 We have also sought and received details of the consultation process from the Applicant [REP6-009, Appendix J] and engagement and change requests from Finns LLP [REP6-027]. We are satisfied that route choice has been appropriate in terms of CA and have not seen anything to suggest that alternatives outside of CA have not been appropriately considered.
- 9.9.51 In terms of justification for the application route, we have already considered the process by which the application route was chosen in terms of its general effects on CA, and have found this to be appropriate. We are of the view that the distribution of plans could have been improved, but we do not consider that this shortcoming adds any weight to a case against the CA and related powers sought.
- 9.9.52 We have already found that the Applicant's approach to voluntary negotiation has been appropriate. We have examined the progress made in this regard. Whilst it is not significant, different circumstances

in different locations can lead to differing outcomes in terms of voluntary negotiation. In our view, each case should be considered on its merits. Here, whilst progress may appear to have been limited, we consider that the Applicant has made sufficient engagement in this regard [REP7-006, Appendix B]. We are also satisfied that the applicant has followed DCLG Guidance³¹⁸ in terms of CA on linear projects.

- 9.9.53 In terms of the use of existing routes, in addition to the work carried out prior to the application, the Applicant considered providing the connection for the Nemo Link[®] by upgrading the PX and PY 132KV lines [REP9-001]. We are satisfied with the explanation given by the Applicant as to why this would not be feasible. In view of the potential cost of diverting the 132kV line during construction, we do not consider that the inclusion of such a diversion in the proposed development would be in the public interest, or would represent an appropriate option to the CA powers sought.
- 9.9.54 In terms of the positioning of pylons, we are satisfied that a change request process has been used appropriately prior to the application being made. This is on the basis that the process reflects our finding that the Applicant's general case in terms of CA has been sufficiently made and that mechanisms would be in place to address the micro-siting of pylons.
- 9.9.55 We will address matters relating to Articles 4 and 14 of the ECHR later in this chapter.
- 9.9.56 In terms of individual objections made, we respond to these as set out below.

Individual objections

- 9.9.57 We have considered the RR submitted by Colin Moss in relation to Objection No 1. As set out previously, we are satisfied that the route for the proposed development has been chosen in the light of general effects from CA. We are therefore satisfied that interference with the objector's rights is necessary for the proposed development. Moreover, compensation mechanisms exist to address any adverse effect on the property, if proved. We therefore recommend the grant of CA and temporary use powers.
- 9.9.58 We have considered all of the representations made in relation to Objection No 2 by PB Headley and Son, Objection No 27 by Richard Peter Headley and Objection No 29 by Mr PM Headley & Mrs J Headley (including the A&M Trust). In respect of pylon positioning, we are satisfied that a pre-application change request process has been carried out and that this has resulted in the movement of some pylons [REP6-027]. It appears to us, from the plans of routes submitted, that

³¹⁸ Guidance related to procedures for the compulsory acquisition of land: DCLG: 2013

the construction accesses are necessary for the works and that access along the line of the proposed development has been identified to be used wherever possible [REP2-015]. In terms of these accesses, appropriate crossing points would be provided, together with traffic control where necessary. This would be regulated through the Construction Environmental Management Plan (CEMP), which would be secured under the rDCO [REP3-015 and REP6-016]. Furthermore, a day to day Agricultural Liaison Officer and a Land Officer would be appointed under the CEMP to make arrangements for and agree all conditions relating to access [REP3-023], thus seeking to keep severance of the objector's land holding to the minimum necessary for the proposed development. We are also mindful that if issues such as severance cannot be settled, this could give rise to a claim for compensation. The need for planting under the rDCO has already been justified to our satisfaction, as set out in Chapter 5, and we consider that the rights and powers sought in relation to this work are no more than necessary.

- 9.9.59 We are satisfied with the Applicant's case for the acquisition of interests in, and the temporary use of, the objector's land and that severance issues, if proven, could give rise to a claim for compensation. We therefore recommend the grant of CA and temporary use powers.
- 9.9.60 We have considered the RR submitted by Karen Isaac under Objection No 3. As set out previously, we are satisfied the route for the proposed development has been chosen in the light of general effects from CA. The remedies of making a claim under Compulsory Purchase Act 1965 or in due course under the Land Compensation Act 1973 would be available to the objector. We are satisfied that the objection does not undermine our finding on the CA powers sought.
- 9.9.61 We have considered the representations submitted by Nethergong Camping under Objection No 4. If there should be any impact on the business and its value, and since no land is taken, this is a matter which relates only to compensation and is outside our consideration under PA2008. We are also satisfied that the general effects of CA were considered during route selection. In terms of flood risk, we have addressed this matter in Chapter 5 of our report. We are satisfied that the objection does not undermine our finding on the CA powers sought.
- 9.9.62 We have considered the RRs submitted by Mr Barnes and Vivienne Lorimer under Objection Nos 6 and 7. If there should be any impact on property values, and since no land is taken, this is a matter which relates only to compensation and is outside our consideration under PA2008. We are also satisfied that the general effects from CA were considered during route selection. We are satisfied that the objections do not undermine our finding on the CA powers sought.
- 9.9.63 We have considered the representations submitted by Mr Bulpitt under Objection No 9. As set out previously, we are satisfied that the route

for the proposed development has been chosen in the light of general effects from CA and temporary possession. We are therefore satisfied that interference with the objector's right of way and powers of temporary possession are necessary for the proposed development. Moreover, any adverse effect on the rights, if proved, could give rise to a claim for compensation. We therefore recommend the grant of CA and temporary use powers.

- 9.9.64 We have considered the representations submitted by Mr Boylan and Georgina Selfe under Objection No 10. The potential impacts on the Kemberland Ancient Woodland have been considered in Chapter 5 of our report. In terms of the CA and temporary possession powers sought, we are satisfied that the route for the proposed development has been chosen in consideration of the effects of these powers. In our view therefore, due consideration has been given to all reasonable alternatives to CA and temporary possession and we can see no lesser steps that could meet the identified need. We therefore recommend the grant of CA and temporary use powers.
- 9.9.65 We have considered the representations submitted by Siobhan Robinson under Objection No 11. We are satisfied that the route for the proposed development and interference with the objector's rights of way and access are necessary. Moreover, any adverse effect on the rights, if proved, could give rise to a claim for compensation. We therefore recommend the grant of CA and temporary possession powers.
- 9.9.66 We have considered the representations submitted by Mr Bullen and Susan Tarrant under Objection Nos 12 and 13. We are satisfied that the exercise of the CA and temporary possession powers would not unnecessarily affect their businesses identified, and that any impact would be in the public interest. Furthermore, should there be any proven impact on their business, this could give rise to a claim for compensation. We therefore recommend the grant of CA and temporary possession powers.
- 9.9.67 We have considered the representation submitted by Mr Thomas under Objection No 15. We are satisfied that the CA and temporary possession powers are necessary for the proposed development. Furthermore, should there be any proven impact on his personal or business land use of property values, this could give rise to a claim for compensation. We therefore recommend the grant of CA and temporary use powers.
- 9.9.68 We have considered the representations submitted by G.G. Baxter (Holdings) Limited and Baxter Farms Limited under Objection Nos 16 and 17. We are satisfied that the Applicant has taken an appropriate approach in considering the necessary access to Pylon PC33 in terms of reducing separation issues. We note that matters relating to the objection are progressing with the objector and that this could give the opportunity for an alternative access that could be acceptable to

the objector. As a result of all of the above, we therefore recommend the grant of CA and temporary use powers.

- 9.9.69 We have considered the representations made by Mr Botting under Objection No 18 and the need for the access to which the objections refer. From the representations made by the Applicant, we are satisfied that its use would be necessary in connection with the proposed development, and that its use would be adequately restricted to that which was necessary. We are also satisfied that appropriate compensation mechanisms would be available to the objector. We therefore recommend the grant of CA and temporary use powers.
- 9.9.70 We have already addressed matters relating to the representations submitted by Robert Brett and Sons Limited under Objection No 19 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.71 We have already addressed matters relating to the representations submitted by Chandler and Dunn Limited under Objection No 20 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.72 We have already addressed matters relating to the representations submitted by Goldstone Farms under Objection No 21 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.73 We have considered the representations made by the King's School Canterbury under Objection No 22. We have already found that impacts from CA and related powers have been sufficiently taken into account in terms of route selection and impact on land. In terms of security and the potential use of accesses, we are not convinced that this would represent sufficient reason not to grant CA and related powers. We have also already addressed matters relating to the other matters raised in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.74 We have considered the representations made by Dyas Farms (1988) Ltd and Nicola Dyas under Objection Nos 23 and 50. We are satisfied that the rights to position pylons are necessary for the purposes of the proposed development and that appropriate mechanisms to compensate the objector would be available. In terms of security and the potential use of accesses, we are not convinced that this would represent sufficient reason not to grant CA and related powers. We therefore recommend the grant of CA and temporary possession powers.
- 9.9.75 We have considered the representations made by David John Fuller and Simone Amanda Fuller and FA Fuller and Son under Objection Nos 24 and 45. In terms of security, damage, value and the potential use of accesses for maintenance purposes, we are not convinced that this

would represent sufficient reason not to grant CA and related powers. We therefore recommend the grant of CA and temporary possession powers.

- 9.9.76 We have considered the representations made by Pippa Southorn under Objection No 25. We are satisfied that the access is necessary for the purposes of the proposed development and that appropriate mechanisms to compensate the objector would be available. In terms of security and the potential use of accesses, we are not convinced that this would represent sufficient reason not to grant CA and related powers. We therefore recommend the grant of CA and temporary possession powers.
- 9.9.77 Matters relating to the representations submitted by Powell-Cotton Settled Estates under Objection No 28 have been addressed in terms of the objection by the King's School Canterbury. We therefore recommend the grant of CA and temporary use powers.
- 9.9.78 We have already addressed matters relating to the representations submitted by Quex Park Estates Company Limited under Objection No 30 in terms of the objection by the King's School Canterbury. This is apart from the matter of compensation, where we have already found compensation mechanisms to be appropriate where rights are acquired. We therefore recommend the grant of CA and temporary use powers.
- 9.9.79 We have already addressed matters relating to the representations submitted by Derek Richard Lawrence, Richard Julian Lawrence, Darren Conway Lawrence and Gary Robert Lawrence under Objection No 31 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.80 We have considered the representations made by FW Mansfield and Son under Objection No 32. We acknowledge that there would be a temporary effect and could be a permanent effect on specialist cropping and on the letting of land to an outdoor sports company. Although we are not convinced that the occupation by the outdoor sports company would have to cease permanently, we are satisfied however that the rights and powers are required for the proposed development and that appropriate compensation mechanisms would be available. In terms of the letting of land and land values, we are not so convinced that there would be a material impact. We are however again satisfied that appropriate compensation mechanisms would be available. We therefore recommend the grant of CA and temporary use powers.
- 9.9.81 We have already addressed matters relating to the representations submitted by John Carlos Orr and Natelie Jane Orr under Objection No 33 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.

- 9.9.82 We have already addressed matters relating to the representations submitted by Ross Patrick O'Brien and David O'Brien under Objection No 34 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.83 Objection No 35 was made by Philip Michael Brook Smith and William Lawrence Greenwell Swan as trustees of the Michael Smith Family Trust 1988 and included severance issues. We have already considered matters raised in our consideration of the grouped objections. They also raised the effect of utilising a temporary diversion for the existing 132kV line which is to be removed. In principle, this could allow the 400kV line to be positioned closer to the 132kV line which is to be retained, to reduce the extent of rights required. We have however already found that this would not be an appropriate alternative to the rights sought. We therefore recommend the grant of CA and temporary use powers.
- 9.9.84 We have already addressed matters relating to the representations submitted by St Nicholas Court Farms under Objection No 36 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.85 We have considered the representations made by BB Stephens and Son under Objection No 37. In terms of alignment, we are satisfied that the Applicant has made an appropriate selection in terms of vegetation associated with the importance of the Sarre Penn watercourse. We are also satisfied that the permanent access through the farmyard is necessary for the proposed development and we note that it is already used by another Statutory Undertaker. We consider that appropriate compensation mechanisms are available in respect of loss of value. We therefore recommend the grant of CA and temporary use powers.
- 9.9.86 We have already addressed matters relating to the representations submitted by Michael Paul Wilkinson and Chislet Court Farms under Objection Nos 38 and 46 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.87 We have already addressed matters relating to the representations submitted by David James Snell under Objection No 39 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.88 We have considered the representations made by The Master, Fellows and Scholars of the College of Saint John The Evangelist in the University of Cambridge under Objection No 40. We have addressed the matters of consultation in the overall representations. We also have already found that the Applicant has made a case sufficient to justify its general request for CA and related powers. We are satisfied that for this objector the access rights and powers sought would be necessary and compensation mechanisms would be available in

relation to severance and economic impact. We therefore recommend the grant of CA and temporary use powers.

- 9.9.89 We have already addressed matters relating to the representations submitted by Mr NS & Mrs DM Daw under Objection No 41 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA powers.
- 9.9.90 We have already addressed matters relating to the representations submitted by Brian Edward Lawrence and Marilyn Irene Lawrence under Objection No 42 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.91 We have considered the representations made by Edward Batchelor, Janet Freeda Batchelor and Robert John Batchelor and J E Batchelor & Partners under Objection Nos 43 and 44. We are satisfied that adequate compensation mechanisms would be available for damage from access use and any severance. In terms of the pre-application change request process, we have already found that this was appropriate. We therefore recommend the grant of CA and temporary use powers.
- 9.9.92 We have considered the representations made by the Church Commissioners for England under Objection No 47. We have already found that impacts from CA and related powers have been sufficiently taken into account in terms of route selection. We are also satisfied that the LRS is adequate and that appropriate compensation mechanisms would be available. We therefore recommend the grant of CA and temporary use powers.
- 9.9.93 We have already addressed matters relating to the representations submitted by Paul Anthony Mansfield under Objection No 48 in terms of the representations submitted by Finns LLP. We therefore recommend the grant of CA and temporary use powers.
- 9.9.94 We do not consider the presence of Margaret Cash under Objection No 49 on the CAO Schedule to represent an objection made to the Panel.
- 9.9.95 We have considered the Objection Nos 51, 52, 53 and 54 representations made by Hatfield Farms DM Botting Partnership, DJ Snell and Ian Smith under the general representations made by Finns LLP and the NFU. We therefore recommend the grant of CA and temporary use powers.
- 9.9.96 We have considered the representation made under Objection No 55 submitted by Robin Hood Events Ltd, an archery business. Whilst we acknowledge that the rights sought could affect the use of the land, we are not satisfied that the positioning of a pylon under these rights sought would necessarily put the archery business out of business. We are satisfied that appropriate compensation measures would be available in the event of business loss. We therefore recommend the grant of CA and temporary use powers.

9.9.97 We have considered the representation made under Objection No 56 submitted through the Applicant by Michael Cash. We have addressed the matters raised in relation to noise and health risk in Chapter 5 of our report. Furthermore, we are satisfied that appropriate compensation measures would be available in relation to any proven adverse impact of the rights sought. We therefore recommend the grant of CA and temporary possession powers.

Conclusion

9.9.98 We have considered all of the objections as set out above. None of these objections leads us to the view that our conclusion in relation to the Applicant's general case in relation to CA and temporary possession should be changed in any way. We therefore recommend the grant of CA and temporary possession powers in each case as set out in the CAO Schedule.

THE EXA'S CONSIDERATION OF REPRESENTATIONS BY STATUTORY UNDERTAKERS

Introduction

9.9.99 In this section of the report, we consider representations made by Statutory Undertakers under s127 and s138 of PA2008.

South East Water - Objection No 8

9.9.100 We have already addressed, and are satisfied with, matters relating to the Applicant's general case for CA earlier in this chapter and alternatives in the area of the reservoir proposal in Chapters 4 and 6. We therefore consider that s122(3) of PA2008 is satisfied in relation to SEW's objection. From the representations made during the Examination, which have not been withdrawn, we are satisfied that the application engages s127 of PA2008 in relation to the CA of rights over land owned by SEW for the purpose of their undertaking. This is the case notwithstanding the early stage which has been reached in terms of the detail of the reservoir proposal.

9.9.101 We therefore turn to consider whether serious detriment under s127(6) would occur in relation to SEW's undertaking if the CA powers sought in the Order are authorised. Our consideration of serious detriment is based on the protections that we have already identified, in Chapter 6 of this report, which must be put in place in relation to the positioning of Pylon PC10 and the protective provisions as set out in the rDCO. There is also no doubt that the term 'serious detriment' goes beyond just 'detriment', and we concur with the SEW suggestion that something would be serious if it was important or significant.

9.9.102 We have found, having considered the parties' positions in some detail in Chapter 6 of this report, that the proposed development would have a limited adverse effect, in terms of physical interaction, on the future mitigation for the reservoir proposal. In coming to this finding, we have also considered the maintenance activities which could be carried

out under the CA rights sought. We are therefore of the view that the CA rights sought to construct, operate and maintain the proposed development would similarly have a limited adverse effect on the reservoir proposal, in terms of physical interaction. Furthermore, these rights would not prevent SEW from constructing or operating the reservoir. When this finding of limited physical adverse effect is related to SEW's undertaking, we do not consider that this effect would be of serious, important or significant detriment in relation to the carrying on of the undertaking.

- 9.9.103 It is agreed between the parties that the proposed development would have a cost impact on the reservoir proposal. From the physical interactions we have already identified in Chapter 6, we can see no reason to disagree with the fact that there would be a cost impact. SEW's position is that additional cost would be a component of the serious detriment that it believes would occur as a consequence of the CA rights sought.
- 9.9.104 The SEW Water Resources Management Plan 2014 (WRMP14) includes a total investment programme of £390m, principally devoted to three key drivers:
- maintaining assets;
 - meeting the demand for water; and
 - meeting legal water quality obligations [REP2-102].
- 9.9.105 WRMP14 includes a capital expenditure over all the years considered in the plan of £77.3m for the 32.5m reservoir proposal at Broad Oak. This lies within a capital expenditure of £204.5m for reservoirs as a whole and within a £406m capital expenditure for the plan as a whole [REP2-106]. On this basis, the reservoir proposal represents some 38% of the plan expenditure on reservoirs and some 19% of the total plan capital expenditure.
- 9.9.106 SEW's estimated reservoir proposal costs have increased since the WRMP14, due to Water Framework Directive mitigation requirements, which include the river diversion and fish pass itself, and also further design development [REP2-205]. The estimated costs are now £117.41m for the 32.5m reservoir and £148.89m for the 36m reservoir. SEW's estimated additional costs due to the presence of the proposed development in connection with the river diversion, fish pass and reservoir crest access bridge are £8.4m for the 32.5m reservoir and £10.5m for the 36m reservoir.
- 9.9.107 The Applicant has identified that, for the 32.5m reservoir, this additional cost represents an increase of some 74% on the river diversion cost of some £12m and an increase of some 125% on the fish pass cost of some £1.3m [REP3-019]. The access bridge cost of some £3.5m has also increased by 49%. For the 36m reservoir these additional cost increases are 51%, 35% and 49%.

- 9.9.108 The Applicant fails to see how these additional costs can be justified [REP3-019] and, in respect of the river diversion and fish pass, we are of the same opinion. This opinion is in the context of the lengths of the river diversion and fish pass cutting over which the conductors would pass compared to the total length of the cutting together with the conductor clearances that would exist. All these are identified in Chapter 6.
- 9.9.109 We do not however accept the Applicant's suggested additional cost of some £0.75m for the river diversion and fish pass, for both the 32.5m and 36m reservoirs [REP3-019]. Furthermore, we have not seen anything to cogently contradict SEW's view that the access bridge construction cost would increase by 49%, or £1.74m, due to the presence of the overhead conductors. When these additional costs are taken together (ie £0.75m + £1.74m), this gives an additional cost of £2.49m.
- 9.9.110 We believe that a realistic additional cost would lie within the range of this £2.49m up to SEW's £8.4m for 32.5m reservoir and £10.5m for 36m. Moreover, because of the lengths of interaction, it would be likely to lie in the lower part of this range.
- 9.9.111 In terms of serious detriment to SEW's undertaking, these additional costs, which the parties agree in principle would arise as a result of the CA rights sought, should be seen in the context of WRMP14. In this regard, £2.49m, £8.4m and £10.5m are some 1%, 4% and 5% of the £204.5m capital expenditure for reservoirs in the plan. They are also some 0.6%, 2.1% and 2.6% of the total capital expenditure in the plan. To us, these proportions do not indicate serious detriment to SEW's undertaking, and again the lower figures in this range would be more likely.
- 9.9.112 We have considered the SEW suggestion that paragraph 8 of the DCLG Guidance³¹⁹ advises that alternatives to the CA of its land should be explored to ascertain whether they could reduce the harm to SEW's interests and that the Applicant has not done this. We have already found that the Applicant's pre-application consideration of alternatives was appropriate in terms of CA. In Chapter 6 of this report, we have also already found that, in view of limited harm to the reservoir proposal, there is no necessity to consider the SEW alternatives put forward during the Examination to further reduce the limited harm that we have found. We therefore consider that reasonable alternatives to CA have been appropriately explored in accordance with the DCLG Guidance.
- 9.9.113 In view of all of the above points, and taking all matters raised by SEW cumulatively, we consider that the rights that are sought over the SEW land in the area of the reservoir proposal can be acquired

³¹⁹ Guidance related to procedures for the compulsory acquisition of land: DCLG: 2013

without serious detriment to the carrying on of SEW's undertaking, as set out in s127 of PA2008. In coming to this view, we have also taken into account protective provisions that we address in Chapter 6 of our report.

- 9.9.114 SEW has also made representations under s138 of PA2008. We have considered these representations, specific protective provisions for the benefit of SEW that have been accepted by the Applicant during the Examination and SEW's final position on these provisions. As a result of these matters and our finding in Chapter 6, that the provisions in the rDCO would be acceptable, we consider that the Secretary of State can be satisfied that the extinguishment or removal of SEW apparatus under the rDCO is necessary for the purpose of carrying out the proposed development.

Network Rail Infrastructure Limited - Objection No 14

- 9.9.115 From the representations received, we are satisfied that s127 of PA2008 is engaged in relation to NRIL's land. We have considered the outstanding matter reported by the Applicant at DL8 and referred to previously in this chapter. The Applicant's protective provisions require that any work, whether specified or protective, must be carried out so as not to interfere, as far as is reasonably practicable, with NRIL's operations and must not interfere with the safety of these operations. Furthermore, NRIL has the power to approve the timing occupation of NRIL property. We therefore consider the Applicant's position on these outstanding matters to be reasonable.
- 9.9.116 We have considered the other amendments to the Applicant's protective provisions that NRIL submitted at DL7, and which were not accepted as changes to the dDCO by the Applicant. In our view, apart from the matter set out below, these amendments would appear to duplicate elements of the Applicant's provisions already in place or restrict the powers of the undertaker under the rDCO without adequate justification. In relation to the notification to NRIL of any application to transfer the benefit of the Order, we consider that it would be for the Secretary of State to decide on any appropriate consultation in this regard at the time of the application. This amendment therefore would be unnecessary. We therefore consider that it would not be appropriate or necessary to incorporate these other amendments in the rDCO.
- 9.9.117 From all of the above we consider that the CA of rights sought within the rDCO can be purchased without serious detriment to the carrying on of NRIL's undertaking, and that the rDCO accords with s127 of PA2008 in this regard. We have also considered NRIL's apparatus in the context of s138 of PA2008. In this respect, we are satisfied that the extinguishment of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development.

Southern Gas Networks plc - Objection No 26

9.9.118 From the representations received, we are satisfied that s127 of PA2008 is engaged in relation to SGN's land. From the uncontested evidence from the Applicant and the form of the exchanged draft SoCG, we consider that the CA of rights sought within the rDCO can be purchased without serious detriment to the carrying on of SGN's undertaking. The rDCO therefore accords with s127 of PA2008 in this regard. We have also considered SGN's apparatus in the context of s138 of PA2008. In this respect, we are satisfied that the extinguishment of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development.

Environment Agency

9.9.119 From the representations received, we are satisfied that s127 of PA2008 is engaged in relation to the EA's land. From the evidence of agreement between the parties, submitted by the EA and the Applicant, we consider that the CA of rights sought within the rDCO can be purchased without serious detriment to the carrying on of the EA's undertaking. The rDCO therefore accords with s127 of PA2008 in this regard. We have also considered the position regarding the EA's apparatus in the context of s138 of PA2008. In this respect, we are satisfied that the extinguishment of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development.

Southern Water Services Limited

9.9.120 From the representations received, we are satisfied that s127 of PA2008 is engaged in relation to Southern Water Services Limited's land. Whilst the parties have not agreed protective provisions, no representations have been made to suggest to us that the rDCO, if made, would result in serious detriment to Southern Water's undertaking. The rDCO therefore accords with s127 of PA2008 in this regard.

9.9.121 We have also considered the representations made by Southern Water in relation to its apparatus. The representation is of a generic nature, and we are satisfied that the extinguishment of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development. The rDCO therefore accords with s138 of PA2008 in this regard.

Conclusion

9.9.122 We have considered all the representations associated with s127 of PA2008. In all cases, we find that the CA of rights sought within the rDCO can be purchased without serious detriment to the carrying on of the undertaking concerned. In relation to s138 of PA2008, we are satisfied that, throughout the scope of the rDCO, the extinguishment

of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development.

SPECIAL CATEGORY LAND

Open space

- 9.9.123 We have considered the Applicant's representations in relation to rights that would be compulsorily acquired over land forming part of an open space [REP2-043 and REP6-010]. We can see no reason to disagree with the Applicant's position on this matter.
- 9.9.124 Furthermore, there are already pylons in the vicinity of the open space, and only part of the fields said to comprise the open space would be subject to the CA of rights. Following construction, only one pylon would be located within the open space, and the rights then sought would be for access and inspection or maintenance of the works. Access for grazing would be available beneath the pylon and beneath the conductors to either side of the pylon. Moreover, the type of pasture vegetation which currently exists in the fields would not be likely to be subject to any management restrictions to maintain clearances to the conductors.
- 9.9.125 The rights sought would therefore be unlikely to have any greater impact on the use of the land for grazing or recreational purposes. We thus find that the impact on the land would make it no less advantageous for those in whom it is vested, any persons entitled to rights of common or other rights and the public. We therefore consider that the test in s132(3) of PA2008 is satisfied and the Secretary of State's confirmation of this point is recorded in the introductory note to the rDCO.

CROWN LAND

- 9.9.126 We have considered the representations made by the Applicant [REP3-016, REP5-015, REP5-019, REP6-010, REP7-009 and REP9-001] and the Crown Commissioners [REP9-008] in the context of recently made orders by the Secretary of State, particularly the recently made Triton Knoll Electrical System DCO (S.I 2016/880). Our consideration is on the basis of our inclusion of Article 21(7) in the rDCO, as set out in Chapter 10 of this report. This is required to ensure that the rDCO does not authorise the CA of an interest held by or on behalf of the Crown as this is not permissible. Our consideration is also on the basis that we have removed the word 'take' from Article 22(1)(a) in the DCO on which we sought comments from the Applicant [PD-012], as it is not possible to 'take' land owned by or on behalf of the Crown.
- 9.9.127 As a consequence of the Applicant's liaison with the Crown during the Examination, and as a result of a specific request from the Panel [PD-014], the Crown Commissioners provided a position statement at the end of the Examination [REP9-008]. In this submission, the Commissioners confirmed that they were in the process of agreeing a position with the Applicant that would permit them to provide consent

for CA under s135(1) of PA2008 and consent for the provisions of the DCO under s135(2).

- 9.9.128 The Commissioners also agreed with the content of the Applicant's suggested Article 22, including that a third party interest in Crown land could be compulsorily acquired subject to the undertaker obtaining Crown authority consent. The Commissioners suggested that this consent requirement would not be necessary if they provided the s135 consents before any Order was made.
- 9.9.129 Section 135(1) of PA2008 requires appropriate Crown authority consent to the acquisition of an interest in Crown land held other than by or on behalf of the Crown. In our opinion, this consent requirement cannot be satisfied by the inclusion of a provision relating to consent for the authorisation of the CA of such an interest within a DCO. Crown consent on this matter cannot therefore be deferred under PA2008 until after an Order is made. We thus do not agree with the positions of the Applicant and the Crown Commissioners in this regard [REP9-001 and REP9-008]. As a result, we consider that the Secretary of State must obtain s135(1) consent from the Crown authority before any Order is made authorising the CA of the interests in Crown land that are held otherwise than by or on behalf of the Crown as set out in the BoR. If this consent is not forthcoming these plots should be excluded from the scope of CA authorised by Article 21.
- 9.9.130 Section 135(2) of PA2008 requires appropriate Crown authority consent to the inclusion of any other provision in relation to Crown land. The Crown Commissioners' final Examination position is that they have yet to provide consent under s135(2). In view of this, we consider that the Secretary of State must obtain s135(2) consent from the Crown authority before the recommended Order is made. This consent is required for the provisions in the rDCO applying in relation to Crown land or rights benefiting the Crown outside of matters dealt with under s135(1).
- 9.9.131 We have considered the Applicant's representations in relation to the plots subject to escheat [REP2-018]. The power to temporarily possess land in these plots is sought to remove redundant infrastructure. The Applicant does not seek to CA of any rights in these plots and s135(1) consent is not therefore required. However, s135(2) consent is required to include provisions authorising temporary possession over these plots. If this consent is not forthcoming, amendments will need to be made to Articles 28, 29 and 30 and Schedule 11 to remove these plots from the scope of temporary possession. We are however satisfied with the Applicant's explanation concerning an existing easement under which the work could be carried out [REP6-009]. In coming to this view, we have taken into account the nature of the work. We have also taken into account that, notwithstanding that the removal of redundant infrastructure in this respect is part of the authorised development, there is nothing to suggest that the infrastructure would need to be removed prior to the proposed overhead line coming into operation. Reliance on an existing

easement therefore would not, in our view, compromise the Applicant's ability to deliver the proposed development.

- 9.9.132 We have also considered whether the existence of the easement would undermine the justification for the seeking of temporary possession powers. The Applicant has explained that, in many cases, rights do exist for the removal of UKPN's lines [REP8-004]. It considers however that temporary powers and the associated extinguishment of rights and restrictive covenants relating to the removal of apparatus are appropriate in relation to UKPN's apparatus. We agree with this position and add that, in our view, they would also give a consistent level of control and potential availability of compensation in connection with the proposed development. We therefore consider that the benefit of this consistency should, if at all possible, extend across all plots subject to escheat in accordance with the powers sought. If this is not possible however, we consider that the Order could still be made, with the inconsistencies in terms of control and compensation matters that reliance on easements may introduce.

TEMPORARY POSSESSION

- 9.9.133 In some instances, temporary possession has been sought as an alternative to CA. The rDCO contains powers for temporary possession which we consider are appropriate for inclusion to support the delivery of the scheme in respect of all plots noted for temporary possession in Schedule 11 of the rDCO, on the Land Plans and in the BoR [REP8-005 to 007]. Temporary possession powers are also authorised by Article 28 (1)(a)(ii) over any other Order land in respect of which no notice of entry has been served or declaration made and similarly in relation to UKPN works by Article 29(1)(a)(ii). The Applicant separated Articles 28 and 29 to limit the powers available to UKPN to those that are related to the UKPN works, and we have seen no reason to change this.
- 9.9.134 These powers are not CA powers and accordingly the tests under s122 and s123 of PA2008 are not applicable. However, the request for the power in order to enable the proposed development to be implemented and maintained must be justified. The inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 9.9.135 We have considered the objections raised by those persons affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land where they are directly or indirectly related to temporary possession. We have also taken all relevant objections into account in reaching our conclusions on the application for temporary possession powers in the same way as for permanent acquisition.
- 9.9.136 We are satisfied that the temporary possession powers sought are needed both to facilitate implementation of the proposed development and to maintain it and that adequate compensation provisions are in

place in the rDCO. We shall now consider the human rights implications of both the temporary and permanent interests and rights sought.

HUMAN RIGHTS ACT 1998

- 9.9.137 In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA and temporary possession powers were granted.
- 9.9.138 The Panel agrees with the Applicant [REP8-004] that, the rDCO would engage Article 1 of the First Protocol and Article 8 of the ECHR.
- 9.9.139 Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.
- 9.9.140 In this case, we have attributed substantial weight to the need described in EN-1 for new electricity transmission infrastructure and how the project would assist in meeting this need. This is a legitimate interest of the wider community. In this context, it is also relevant that those affected would be entitled to compensation. Moreover, the Applicant has taken a number of steps to ensure its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond what is absolutely necessary.
- 9.9.141 The Applicant has varied the Order limits along the line of the proposed development, to ensure that the land affected has been kept to a minimum, and route choices have avoided settlements. Only temporary possession and permanent rights to access and maintain the development are being sought rather than freehold interests. In many cases, the land would be returned to its original purpose and use following the construction of the project. This would apply to a significant proportion of the land which is in agricultural use.
- 9.9.142 Reliance has also been placed upon temporary possession, rather than permanent acquisition, and the Applicant has sought to reach voluntary agreements with all persons with an interest in the land affected.
- 9.9.143 We are therefore satisfied that the powers sought are no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Articles 1 and 8.
- 9.9.144 The Panel agrees with the Applicant [REP6-010] that the rDCO would not engage Articles 4 and 14 of the ECHR, as suggested by the NFU

[REP6-028]. This is on the basis that there is no evidence of any link between the rights sought and forced or coerced labour because the scheme has given insufficient regard to effects on businesses and the labour employed. It is also on the basis that there is no evidence to convince us that property owners in the agricultural sector have been subject to unjustifiable and differential treatment compared to others in comparable situations.

- 9.9.145 The Panel also agrees with the Applicant [REP8-004] that the dDCO also engages Article 6 of the Convention which relates to the need for a fair hearing. The application and its Examination procedurally accord with PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. We therefore consider that there would be no violation of Article 6.
- 9.9.146 Finally, in terms of the overarching aims of the Human Rights Act 1998, DCLG Guidance and the required balancing exercise, we are satisfied that the public benefit from the proposed development would clearly outweigh any interference with the human rights of those with an interest in the land affected.
- 9.9.147 We therefore consider that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

THE EQUALITY ACT 2010

- 9.9.148 Section 149 of the Equality Act requires a public authority, in the exercise of its functions, to: have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are: age; gender; gender reassignment; disability; pregnancy and maternity; religion and belief; and race. There is no evidence that the proposed development would have any specific impact in relation to persons who share a protected characteristic, including those identified by the NFU, as compared to persons who do not or any indication that allowing the proposed development would have any harmful equality implications.

ADEQUACY OF FUNDING

The funding required

- 9.9.149 The Funding Statement [APP-009], which accompanied the application, indicates that the total cost of payments for land acquisition, incentive payments, disturbance, injurious affection and related professional fees is estimated at £3.9m. The estimated project

cost is given as being in excess of £600m. The Applicant has developed these costs using its internal estimating database. Costs within the database are informed by cost information obtained from discussions and budgetary estimates from manufacturers and installers as well as recent costs obtained in tenders and completed contracts. The unit costs closely align with the findings of the Institute of Engineering and Technology Electricity Transmission Costing Study (2012). These figures include a 10% contingency, and the possibility of the receipt of Blight Notices has been factored into the cost of the Applicant's financial calculations.

- 9.9.150 The Panel finds the manner in which the Applicant has assessed the funding required for compulsory acquisition, and the likely cost of the implementing the project, to be entirely satisfactory and reliable.

The source of the funding

- 9.9.151 The Funding Statement [APP-009] indicates that the Applicant owns and operates the high voltage electricity transmission network in England and Wales. It has a duty under the Electricity Act 1989 to develop and maintain an efficient, co-ordinated and economical system of electrical transmission. The RIIO - T1 price control arrangement for National Grid which began on 1 April 2013, put in place all funding arrangements to allow National Grid licensed entities, including the Applicant, to discharge its duties as Transmission Operator and Owner.
- 9.9.152 The Applicant has a regulatory asset value of over £11bn whilst National Grid plc has a regulatory asset value of over £37bn. National Grid typically raises £3bn in borrowing each year and has access to liquid funds in excess of £2bn.
- 9.9.153 The Applicant would be responsible for ensuring that adequate funding is available for the total costs of the scheme, including the UKPN works. The Applicant has confirmed that, in practice, it would be managing the process, negotiation and payment for any land/easements on behalf of UKPN. The Applicant therefore asks the Secretary of State to judge this matter on the basis of the Applicant's ability to fund the project, and not UKPN's.
- 9.9.154 The Panel has no reason to doubt that the Applicant is of sound financial standing and that the necessary funds would become available to finance the project, including CA. In response to our questioning, the Applicant has suggested that UKPN would not engage in any CA or temporary possession powers without an indemnity from the Applicant. Whilst this would appear to represent a sound commercial position, we consider that reliance on this position would not give sufficient security that persons affected by CA by UKPN would be able to claim compensation from the Applicant. The Applicant's agreements with UKPN, some of which have not yet been completed, are said to be commercially confidential and, despite a direct submission from UKPN, we have not been able to obtain any further

information on any indemnity or related mechanism. We therefore consider that, before any Order is made, the Secretary of State should seek further confirmation on any indemnity within these agreements, or any other related mechanism, to ensure that responsibility for UKPN related CA and other costs lies with the Applicant.

- 9.9.155 Should the Secretary of State be satisfied in relation to the indemnity or related mechanism matter identified above, the source of the funding does not provide us with any cause for concern or reason to doubt that the project would, in fact, be implemented, if granted consent.

9.10 EXAMINING AUTHORITY OVERALL COMPULSORY ACQUISITION AND RELATED MATTERS CONCLUSION

S122(2) - THE PURPOSE FOR WHICH COMPULSORY ACQUISITION IS SOUGHT

- 9.10.1 The Panel is satisfied that the CA sought in all the plots of land included in the revised BoR and shown on the Land Plans (as amended) [REP8-005 to 007, and REP8-008] would be required for, or to facilitate or incidental to, the proposed development to which the development consent relates. Both the principal development, and the associated development, identified by the application would be needed for that purpose. The requirements of s122(2)(a) and (b) of PA2008 are, therefore, met.

S122(3) - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST

- 9.10.2 The Panel has had regard to the objections raised by all APs. Nevertheless, we conclude that the public benefits associated with the proposed development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the project.
- 9.10.3 We have also taken into account the particular points made by objectors in relation to alternatives, including modifications to the route and alternative technologies. However, we are satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the scheme. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.
- 9.10.4 The Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds both for acquiring the land and implementing the project becoming available.
- 9.10.5 The Panel concludes that:

- the development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
- the NPSs identify a national need for new electricity transmission infrastructure of the type that is the subject of the application;
- the need to secure the rights required and to construct the development within a reasonable commercial timeframe, and to ensure that the supply of electricity is not thereafter impeded, represents a significant public benefit to weigh in the balance;
- the private loss to those affected has been mitigated through the selection of the application land, and the extent of the rights and interests proposed to be acquired;
- the Applicant has explored all reasonable alternatives to the CA of the rights and interests sought, and there are no alternatives which ought to be preferred;
- adequate and secure funding would be available to enable the CA within the statutory period following the Order being made; and
- the resource implications of a possible acquisition resulting from a blight notice have been taken into account.

9.10.6 Taking these various factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans (as amended). The proposal would thus comply with s122(3) of PA2008.

S120(5)(A) AND S126 - THE INCORPORATION OF OTHER STATUTORY POWERS

9.10.7 The rDCO seeks, in a number of instances, to apply s120(5)(a) of PA2008 and apply, modify or exclude a statutory provision. Since the rDCO is in the form of a statutory instrument, it would comply with s117(4) of PA2008. Furthermore, no provision would contravene the provisions of s126 of PA2008 which relates to the modification or exclusion of a compensation provision.

S127 AND S138

9.10.8 Section 127 and s138 representations have been made and not withdrawn. These representations have been considered as set out above. In the case of each s127 representation, the Panel concludes that the Secretary of State can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the Statutory Undertaker in question should the CA powers sought be granted. In the case of s138, the Panel is satisfied that the extinguishment of the relevant rights, or the removal of the relevant apparatus, would be necessary for the purpose of carrying out the development to which the Order relates.

S132 - OPEN SPACE

9.10.9 We consider that the impact on open space land from the rights sought in the rDCO would make it no less advantageous for those in

whom it is vested, any persons entitled to rights of common or other rights and the public. We therefore consider that the test in s132(3) of PA2008 is satisfied and the Secretary of State's confirmation of this point is recorded in the introductory note to the rDCO.

S135 - CROWN LAND

- 9.10.10 We consider that the Secretary of State must obtain s135(1) consent from the Crown authority before any Order is made authorising the CA of the interests in Crown land that are held otherwise than by or on behalf of the Crown as set out in the BoR. If this consent is not forthcoming these plots should be excluded from the scope of CA authorised by Article 21.
- 9.10.11 We consider that the Secretary of State must obtain s135(2) consent from the Crown authority before the recommended Order is made. This consent is required for the provisions in the rDCO applying in relation to Crown land or rights benefiting the Crown outside of matters dealt with under s135(1).
- 9.10.12 In relation to the plots subject to escheat, we consider that the Secretary of State must obtain s135(2) consent from the Crown authority before the rDCO is made. If this consent is not forthcoming, amendments will need to be made to Articles 28, 29 and 30 and Schedule 11 to remove these plots from the scope of temporary possession. We are however satisfied with the Applicant's explanation concerning an existing easement under which the work could be carried out and, should these plots be removed, we are satisfied that the Order can be made in this regard.

TEMPORARY POSSESSION

- 9.10.13 We are satisfied that the temporary possession powers sought are necessary both to facilitate implementation of the proposed development and to maintain it and adequate compensation provisions are in place in the rDCO.

HUMAN RIGHTS ACT 1998 AND THE EQUALITY ACT 2010

- 9.10.14 We are satisfied that, in relation to the inclusion of CA and temporary possession powers in the rDCO, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest. We are also satisfied that there is no evidence that the proposed development would not accord with s149 of the Equality Act 2010.

ADEQUACY OF FUNDING

- 9.10.15 We consider that, before any Order is made, the Secretary of State should seek confirmation on any indemnity within agreements between the Applicant and UKPN, or any other related mechanisms, to ensure that responsibility for UKPN related CA and other costs lies with the Applicant. Should the Secretary of State be satisfied in relation to

the indemnity matter identified above, the source of the funding does not provide us with any cause for concern or reason to doubt that the project would, in fact, be implemented, if granted consent.

9.11 EXAMINING AUTHORITY RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

9.11.1 In the event that the Secretary of State is minded to grant development consent for the proposed development, we recommend that:

- the CA powers included in the rDCO be granted, subject to the matters as set out below in relation to Crown land and funding;
- the temporary possession powers included in the rDCO be granted, subject to the matters as set out below in relation to Crown land;
- the CA powers sought in respect of Crown land should not be granted until the necessary consent from the Crown authority has been obtained. For plots subject to escheat, the powers sought should not be granted until the consent of the Crown authority is obtained, or these plots are excluded from the rDCO.
- the powers authorising the CA of Statutory Undertakers' land and rights over land included in the rDCO be granted;
- the powers authorising the extinguishment of rights, and removal of apparatus, of Statutory Undertakers included in the rDCO be granted;
- the powers authorising the CA of rights over open space included in the rDCO be granted;
- the Secretary of State can be satisfied that the order land, in relation to open space land, when burdened with the order right will be no less advantageous that it was before to persons in whom it is vested, other persons and the public;
- the powers included in the rDCO to apply, modify or exclude a statutory provision be granted; and
- before any Order is made, the Secretary of State should seek confirmation on any indemnity within agreements between the Applicant and UKPN, or any other related mechanism, to ensure that responsibility for UKPN related CA and other costs lies with the Applicant.

10 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

10.1 INTRODUCTION

- 10.1.1 The Applicant's draft DCO (dDCO) [APP-006] along with an Explanatory Memorandum [APP-007] was submitted as part of the application for development consent by National Grid. The Explanatory Memorandum describes the purpose of the dDCO and each of its articles and schedules and was updated towards the end of the Examination, to reflect the evolving dDCO [REP8-003].
- 10.1.2 The dDCO was based on the general model provisions of the now repealed Infrastructure Planning [Model Provisions] [England and Wales] Order 2009 with some reference also being made to the railway model provisions given the linear nature of the scheme. In addition, 'precedents' from other made Orders for electric lines have been referred to. In its Explanatory Memorandum, the Applicant referred to the precedent set in the National Grid Kings Lynn B Power Station Connection DCO 2013 (S.I. 2013/3200); the National Grid North London Reinforcement Project DCO 2014 (S.I. 2014/1052); and the National Grid (Hinkley Point C Connection Project) Order 2016 (S.I. 2016/49) [REP8-003].
- 10.1.3 The Secretary of State made the Order for the Hinkley Point C Connection project (S.I. 2016/49) after the present application was accepted for Examination. Several of the Panel's first written questions (FWQ) sought to tease out differences in the drafting between the Hinkley Point C Connection Order and the dDCO. As a consequence, many of the amendments made to the dDCO at its first revision by the Applicant reflected updates to the drafting in the light of that made Order.

10.2 DRAFT VERSIONS OF THE DEVELOPMENT CONSENT ORDER

- 10.2.1 The Panel looked into the detail of the structure and effectiveness of the dDCO through written and oral questions including three DCO Issue Specific Hearings (ISH):
- First DCO ISH on 28 July 2016 (DCO1);
 - Second DCO ISH on 27 September 2016 (DCO2); and
 - Third DCO and other matters ISH on 9 and 10 November 2016 (DCO3)
- 10.2.2 At the end of the Examination, four successive versions of the dDCO were published as listed below:
- (i) Application dDCO (Doc 2.1) dated 14 January 2016 [APP-006];
 - (ii) Revised dDCO (Doc 2.1(A)) dated July 2016 and comparing revisions between this and the application dDCO [REP2-003];
 - (iii) Revised dDCO (Doc.2.1(B)) dated September 2016, comparing the three versions of the dDCO [REP4-003];

- (iv) Revised dDCO (Doc.2.1(C)) dated October 2016 comparing all four versions of the dDCO [REP6-003]; and
- (v) Revised dDCO (Doc.2.1(D)) dated November 2016 [REP7-004] comparing all five versions of the dDCO.

10.2.3 In response to requests by the Panel at DCO1, the Applicant also provided the equivalent of an Explanatory Memorandum for protective provisions at Deadline (DL) 4 [REP4-013, Annex A].

10.3 DELETION OF ARTICLES FROM THE DEVELOPMENT CONSENT ORDER

10.3.1 The Applicant proposed deletion of three articles of the dDCO in response to ExA questions over their relevance. The articles are Part 5: Article 19 - powers of acquisition and Article 27 - statutory authority to override easements and other rights; and in Part 6: Article 48 - application and modification of legislative provisions.

ARTICLE 19 - STATUTORY AUTHORITY TO OVERRIDE EASEMENTS AND OTHER RIGHTS

10.3.2 This was deleted from the dDCO by the Applicant following the ExA's FWQ which asked whether the article was necessary [REP2-002 and PD-006, Q1.5.1]. The Applicant determined it was not and the ExA agrees.

ARTICLE 27 - ACQUISITION OF PART OF CERTAIN PROPERTIES

10.3.3 This article was deleted from the dDCO by the Applicant after the ExA asked for details of the circumstances when this might apply at DCO1 [EV-021 to 024]. The Applicant explained that the article was not required as there is no outright acquisition of land within the dDCO [REP4-013].

ARTICLE 48 - APPLICATION AND MODIFICATION OF LEGISLATIVE PROVISIONS

10.3.4 The ExA asked whether this article was necessary given that a similar article was removed from the Hinkley Point C Connection DCO [S.I. 2016/49] by the Secretary of State [PD-006, Q1.5.22]. The Applicant agreed it was not necessary and it was removed at DL2 [REP2-003].

10.3.5 The ExA is content with the deletion of the above articles and as such, they are not included in the recommended Development Consent Order (rDCO).

10.4 MINOR TYPOGRAPHICAL ERRORS

10.4.1 A number of typographical errors were identified by the Applicant towards the close of the Examination. In addition, the ExA has also identified several typographical errors. These are included in Table A of Chapter 10 and marked with an asterix.

10.5 IMPLICATIONS OF THE HOUSING AND PLANNING ACT 2016

- 10.5.1 On 30th January 2017 the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 were made. These regulations brought into force certain provisions of the Housing and Planning Act 2016 on the 3rd February 2017. These include provisions amending the Compulsory Purchase (Vesting Declarations) Act 1981, the Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981. The amendments apply to compulsory acquisition of land authorised on or after the 3rd February 2017 and will therefore apply to any compulsory acquisition authorised by the Secretary of State in this DCO.
- 10.5.2 The regulations bring into force provisions which repeal s3 and s5(1) of the Compulsory Purchase (Vesting Declarations) Act 1981. Article 25 of the rDCO seeks to amend s3 and s5(1) of the Compulsory Purchase (Vesting Declarations) Act 1981. As these provisions have now been repealed the proposed amendments in the rDCO are no longer effective. The ExA recommends that the Applicant's views are sought on whether sub sections (3) to (6)(a) of Article 25 should be removed from the rDCO and whether any other consequent amendments to Articles are required.
- 10.5.3 The regulations also bring into force provisions which replace s8(1) of the Compulsory Purchase Act 1965. Article 21(3) of the rDCO refers to s8 and the ExA recommends that the views of the Applicant are sought regarding the necessity to make any amendments to this subsection as a result of the changes that have been made to s8 of the Compulsory Purchase Act 1965. Paragraphs 2(3) and 5 of Schedule 10 of the rDCO also relate to s8 of the Compulsory Purchase Act 1965 and the ExA recommends that the Applicant's views are sought on whether any amendments are required to these as a result of the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017.

10.6 ARTICLES OF THE RECOMMENDED ORDER

- 10.6.1 As a result of the deletion of three articles and the insertion of a new Article 22 - Crown Rights, into the dDCO, article numbers have changed during the course of the Examination. For clarity, in our report, we adopt the numbering in the rDCO. In instances where we refer to submissions which use old numbering, we will clarify the rDCO numbering through the use of footnotes.
- 10.6.2 Articles in the rDCO are divided into six parts. These are:
- (1) Part 1: Articles 1 and 2 which set out the preliminary provisions providing for commencement, citation and interpretation;
 - (2) Part 2: Articles 3 to 9, containing the Principal Powers in relation to the Order;
 - (3) Part 3: Articles 10 to 15, 'Streets' referring to matters relating to the application of the New Roads and Streets Works Act 1991 as

well as construction and maintenance, classification, stopping up, access to works and clearways;

- (4) Part 4: Articles 16 to 18 includes Supplemental Powers in relation to discharge of water, protective works to buildings and authority to survey and investigate land;
- (5) Part 5: Articles 19 to 33 contains the powers in relation to acquisition and possession of rights and temporary use of land; and
- (6) Part 6: Articles 34 to 49 providing a number of miscellaneous and general provisions including the Deemed Marine Licence (DML); defence to proceedings in respect of statutory nuisance; felling or lopping of trees; certification of plans and arbitration.

10.6.3 Articles that were the subject of some discussion are discussed in turn below. Other elements of the Order are not discussed below; in these cases, the Secretary of State can conclude that the Panel is content with the drafting.

ARTICLE 2 - INTERPRETATION

10.6.4 Over the course of the Examination, a number of minor edits have been made to this article, not considered by the ExA to be contentious.

10.6.5 Other changes include the insertion of a definition of the Noise and Vibration Management Plan (NVMP), so that this would align with the inclusion of descriptions for all other documents referred to in Requirement 5 (R5) of the dDCO; and revised drafting to ensure that the plans, schemes and strategies referred to in different parts of the article would be integral elements of the Construction Environmental Management Plan (CEMP). To this effect, the phrase 'accompanying the CEMP' has been replaced with 'included as part of the CEMP' throughout the article.

10.6.6 As a result of FWQs and discussion at DCO1 definitions for 'requirements' and 'operational use' were added into the Order [REP2-003]. Following DCO2 a definition for 'foundations' was also included in the article [REP4-003].

10.6.7 The ExA agrees with the additional definitions and with the changes to 'include' the other plans, schemes and strategies in the CEMP because we consider this gives greater clarity to the relationship between the plans, schemes and strategies and the CEMP.

ARTICLE 3 - DEVELOPMENT CONSENT ETC GRANTED BY THE ORDER

10.6.8 In the ExA's Q1.5.3 [PD-006], the Applicant was asked to remove Article 3(2); (3); and (4) to follow practice in the Hinkley Point C Connection DCO where this was considered to be unnecessary by the Secretary of State, given the terms of s16 of PA2008.

- 10.6.9 In its response, the Applicant explained that it considered s16 of PA2008 to refer to the 'installation' of an electric line above ground, but not 'keeping' the line installed. The drafting of the dDCO, in its view, seeks to make this clear and to ensure that it is able to 'keep' the overhead line installed [REP2-016]. The Applicant also explained at DCO1, that the specific sub-paragraphs had not been discussed with the Panel during the examination of the Hinkley Point C Connection [REP3-106].
- 10.6.10 The Panel requested the Applicant to provide a post-hearing note, setting out its position and the legal reasoning underpinning its view that the sub-paragraphs should remain in the Article [EV-021]. The Applicant responded at DL3 [REP3-023 Appendix A]. In essence, the Applicant explains that the removal of the sub paragraphs might no longer authorise the 'keeping' of an electric line installed, to satisfy s37(1B) of the Electricity Act 1989 [REP3-023 Appendix A para 1.10].
- 10.6.11 Notwithstanding deletion of the sub-paragraphs by the Secretary of State in the Hinkley Point C Connection Order, the Panel considers that the explanation provided by the Applicant during this Examination in relation to the need for 'keeping' the line installed, shines a different light on the intent and purpose of this Article. However, in the interest of greater precision, the ExA proposes a minor amendment to conflate the wording of 2(a) and (b) as is the case in (3). With this minor amendment, the ExA is of the view that retention of the sub-paragraphs (2), (3) and (4) provides a greater degree of clarity and is included in our rDCO.

ARTICLE 5 - LIMITS OF DEVIATION

- 10.6.12 The limits of deviation (LoD) were discussed extensively during the Examination. Interested Parties (IPs) including National Farmers' Union (NFU), South East Water (SEW) and Broad Oak Preservation Society (BOPS) were particularly concerned about the siting of pylons and the effect of their location on farming practices, the Broad Oak reservoir proposal and Broad Oak village respectively. Chapters 5 and 6 consider these concerns in detail.
- 10.6.13 In so far as the drafting and intent of the article is concerned, the Panel questioned various aspects including whether:
- (i) the powers sought had been assessed in the ES;
 - (ii) there should be reference made to the ES in the article;
 - (iii) the extent of the LoD and whether there should be longitudinal repositioning limitations on these powers; and
 - (iv) if no downwards vertical limits, to explain how the wording of the article would ensure that effects would be no greater than those assessed in the ES [PD-006, Q1.5.4].
- 10.6.14 The Applicant confirmed that the LoD had been assessed in the ES. It considers that there is no need to include a reference to the ES in the article. It also explains that the lateral LoD are depicted on the Works

Plans as a chain dotted line, and as they are not a parallel swathe, to include dimensions would, in the Applicant's view, make the plans cluttered [REP2-016].

- 10.6.15 In so far as downwards vertical limits are concerned, the Applicant argues that flexibility is necessary given changing ground conditions and the fact that detailed ground level surveys would not take place until the construction phase of the project [REP2-016]. The Applicant confirmed that upwards LoD are defined and could not exceed four metres and that this is needed to ensure safety clearances would be maintained depending on what objects are on the ground.
- 10.6.16 As to whether effects would be no greater than those assessed in the ES, the Applicant explains that in its view the Order if made, would confer development consent to construct the authorised development as set out in Schedule 1, with the deviation allowed through Article 5. Any departures from this would only be allowed if agreed by the relevant planning authority and any revised works would not give rise to any materially new or different environmental effects from those assessed in the ES, thereby ensuring that effects would be no greater than those as assessed [REP2-016, Q1.5.4 and REP2-017, Appendix G]. It was pointed out by BOPS that the 'illustrative material' showed the proposed development as shown on the design drawings, not the maximum extent (eg height of pylon) of the LoD [REP8-029].
- 10.6.17 A detailed explanation of the process undertaken by the Applicant for determining the extent of LoD was provided in response to FWQs. This includes a Table entitled 'Pinch Points to LoD' with references to seven LoD pinch point locations due to a variety of constraints including groups of trees, environmental constraints, listed buildings and the proximity of the proposed overhead line to residential properties [REP2-017 Appendix G].
- 10.6.18 We are content with the response provided by the Applicant to our FWQs in relation to LoD as confirmed at DCO3; and the reasons for the flexibility sought under Article 5. The Applicant confirmed that the effects would be no greater than those assessed in the ES at DCO3, in response to additional questions posed through the Panel from BOPS [REP7-009, para 7.9]. We acknowledge that the illustrations in the photomontages do not necessarily show the maximum extent of the LoD, but that the worst case scenario has been assessed.
- 10.6.19 Notwithstanding this assurance, the Panel remained unclear about how movement of pylons along the line (longitudinal repositioning) would be decided and how much deviation there could be. SEW also expressed queries in this regard. The Applicant explained that longitudinal repositioning would be determined on a case by case basis, because the extent would depend on the subsequent effects on positions of the next pylons [REP2-017, Appendix G]. The Applicant explained that although in theory pylons could be moved anywhere along the line, there were practical restrictions on the movement such as conductor sway and statutory clearances. A Post Hearing Note

explaining LoD was submitted following DCO2 [REP5-015, Appendix B].

- 10.6.20 The ExA is satisfied from the explanations provided by the Applicant that the ES has taken the LoD into account and that assessments present worst case scenarios for lateral and upward deviation from that shown on the design drawings. The Applicant's explanation of the practical limitations on longitudinal repositioning are helpful and we note that longitudinal repositioning could not result in, for example, pylons taller than that assessed. We also give weight to the inclusion of the PIL Liaison Procedure for micro-siting included in the CEMP because we consider this will help to alleviate some of the practical issues raised by the farming community and also because it would apply to lateral and longitudinal movement.
- 10.6.21 With regard to the role of the relevant planning authority to agree any revised works, we consider that there is some ambiguity in the wording of Requirement 1(3) of the Applicant's dDCO. We discuss this in more detail later in this Chapter under the Requirement 1 subsection, along with our proposed drafting amendments.
- 10.6.22 Turning to the concerns of NFU and other IPs in relation to micro-siting and dispute resolution, we are content that the CEMP, which would be a certified document in accordance with Article 43, is an appropriate location for the PIL Liaison Procedure. In our view, the steps that are outlined in this procedure will afford transparency and confidence to the farming community that their concerns would be properly considered in relation to micro-siting of pylons.

ARTICLE 6 - BENEFIT OF THE ORDER

- 10.6.23 In Q1.5.5, the ExA proposed deletion of all wording from 6(1) prior to the following sentence: "*the provisions of this Order have effect for the benefit of -...*" to simplify its wording and to follow the precedent set by the Hinkley Point C Connection Order [PD-006]. The Applicant agreed and made the drafting change at DL2 [REP2-016 and REP2-003].

ARTICLE 7 - CONSENT TO TRANSFER BENEFIT OF THE ORDER

- 10.6.24 In its signed Statement of Common Ground (SoCG), the Marine Management Organisation (MMO) requested inclusion of a new subparagraph 7(2) to make clear that the Secretary of State must consult with the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the DML [REP7-012]. The Applicant accepted this request and inserted new wording at DL2, along with a definition of MMO at Article 2 (Interpretation) [REP2-003]. The Panel has no reason to disagree with this amendment and includes the amendment in the recommended Order.
- 10.6.25 The NFU and Finns LLP questioned whether the transfer of right should be limited to undertakers as defined by the Electricity Act 1989 [REP3-046]. We do not consider this necessary because any transfer must be

consented by the Secretary of State which means that the Secretary of State would have to ensure that the transferee is appropriate and has any necessary licence under the Electricity Act 1989.

ARTICLE 16 - DISCHARGE OF WATER

- 10.6.26 At FWQs, the ExA requested the water undertakers and the Environment Agency (EA) to confirm whether they were content with the provisions of Article 16 and their view of the longstop default provision of 28 days after which consent/ approval would be deemed to have been granted [PD-006, Q1.5.10].
- 10.6.27 The Environment Agency (EA) confirmed it was satisfied with both aspects of the article [REP2-060]. The River Stour (Kent) Internal Drainage Board (IDB) notes that the discharge of water into any watercourse would require an Environmental Permit from the EA and that the EA is satisfied with the provisions and the timing default position [REP4-038]. Given this, the Panel is content with the drafting of the article.
- 10.6.28 SEW by contrast, indicated that it was not satisfied with either the provisions of the article or the longstop default provision [REP2-098]. It argued that the removal of apparatus should be done in accordance with the form of wording put forward in its protective provisions submitted as part of its Written Representation (WR) at DL2. [REP2-235 (clean) and REP2-236 (Comparison with National Grid Protective Provisions)].
- 10.6.29 During the Examination, the Applicant responded to these concerns by providing protective provisions specifically for the benefit of SEW and by taking a number of SEW's concerns into account. These protective provisions were agreed between the Applicant and SEW apart from certain matters [REP7-008, REP7-029, REP7-036, REP8-018 and REP8-023]. These matters relate to SEW's right to retain and maintain apparatus, and access to it, in land in which the undertaker has acquired an interest, under rDCO Protective Provisions 49 and 53. They also relate to, where related to the authorised works, the payment of SEW's costs together with an indemnity against all claims and demands made against SEW, under SEW's suggested Protective Provision 53 [REP7-036].
- 10.6.30 SEW's position, under rDCO Protective Provisions 49 and 53, is that its rights should not be made significantly more difficult to exercise before the other protective provisions take effect. We consider that this would be disproportionately protective of SEW's undertaking. This is because SEW's apparatus cannot be removed or diverted at any time without being subject to the subsequent protective provisions and SEW's rights cannot be made incapable of being exercised for a period of longer than seven consecutive days before the subsequent protective provisions take effect. Both of these matters have been agreed by SEW. We are also concerned about imprecision of the term 'significantly'; either the right, as with other rights, could be exercised

or not, and any disputes as to whether it could be exercised could be addressed by other mechanisms.

- 10.6.31 We consider that SEW's position, under its suggested Protective Provision 53, would also be disproportionately protective of its undertaking. This is because rDCO Protective Provision 52 would already provide a payment of compensation to SEW, in addition to the making good of any damage. Again, any disputes as to the level of compensation could be addressed by other mechanisms.
- 10.6.32 We consider that the provision of a specific indemnity for the benefit of SEW would be somewhat unusual, as such a measure would not be available to other statutory undertakers in relation to electricity, gas, water or sewerage under the rDCO. An indemnity for the benefit of SEW therefore requires a level of justification greater than the circumstances that other such undertakers may find themselves in. We have found that such circumstances exist in relation to provisions directly related to SEW's reservoir proposal, as has the Applicant. We have not however seen any reasoned justification that they exist in the general case. Should the Secretary of State decide that an indemnity is necessary in this case, the Applicant has provided a form of protective provision [REP8-018] that we consider would be more proportionate than that suggested by SEW.
- 10.6.33 In view of all of the above points, we consider that the protective provisions for the benefit of SEW in the rDCO would provide an appropriate and proportionate response to its concerns in relation to Article 16.
- 10.6.34 Kent County Council (KCC) in its role as Lead Local Flood Authority (LLFA), requested reference to the discharge of water to highway drains which are adopted and managed by KCC as local highway authority [REP4-026, Q2.11.3]. The Applicant agreed, and included at R16(10)(a) the additional words 'the highway authority' in relation to 'public drain or sewer' [REP7-004]. We do not disagree with this amendment and it is included in the rDCO.

ARTICLE 18 - AUTHORITY TO SURVEY AND INVESTIGATE THE LAND

- 10.6.35 The NFU requested that any notice issued under this article should have greater clarity regarding its content and scope, including details of the type of survey to be carried out, who is carrying out the survey and what, if any, equipment is to be left on the land [REP3-046].
- 10.6.36 The Applicant initially resisted this. It argued that the article had precedent in other Orders and that the drafting did provide clarity on the content and scope of the notice, as well as appropriate notification provisions [REP4-014, Q2.4.13]. However, following further representations by the NFU at DCO3 [EV-071 to EV-077], the Applicant agreed to include additional wording at 18(3)(b) to make clear in the article that the undertaker *"must, before entering the*

land, provide in the notice details of the purpose ...to survey and investigate the land" [REP6-003].

- 10.6.37 Representations were also made by DDC at DCO3 requesting the inclusion of consistent reference to 'bore holes and excavations' in the article, proposing that the new wording be inserted at Article 18(1)(b) and 18(3)(c) and 18(4). After reviewing the article, the Applicant provided additional wording at Article 18(1)(b) and 18(1)(d) in order to meet the concern raised by the Council.
- 10.6.38 The ExA has considered the changes made to the drafting of the article by the Applicant. The ExA is satisfied that these changes improve clarity and seek to address the concerns raised by IPs. As such, we are content to include the article in the recommended Order.

ARTICLE 21 - COMPULSORY ACQUISITION OF RIGHTS

- 10.6.39 During the Examination, the Applicant deleted elements of this article from the application DCO which required consent from the appropriate Crown authority before interests in Crown land could be acquired under the DCO; and also defined terms referred to in this element of the article. These deletions were made on the basis that the ExA suggested they were unnecessary and had been removed by the Secretary of State in the Hinkley Point C Connection DCO (S.I. 2016/49) [REP2-016, Q1.5.12], following the inclusion of a separate Crown rights article.
- 10.6.40 Section 135 of PA2008 (s135) does not permit the compulsory acquisition of interests in Crown land held by or on behalf of the Crown. As currently drafted, Article 21 purports to grant compulsory acquisition powers over all of the Order land described in the Book of Reference, which includes land and interests in land held by the Crown. In line with recent Orders made by the Secretary of State, the ExA considers that the addition of drafting to prevent the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown is necessary to ensure compliance with s135 of PA2008 [PD-014].
- 10.6.41 The Applicant is of the view that this addition is not necessary because Article 22 requires the consent in writing of the appropriate Crown authority before any interest in Crown land can be compulsorily acquired [REP9-001]. The Crown Estate Commissioners are also of the view that, should the Applicant's Article 22 be included in the DCO, there would be no need for our addition as set out above [REP9-008]. We do not consider that these representations comply with s135 of PA2008, as set out above, and have therefore included Article 21(7) in the rDCO.

ARTICLE 22 - CROWN RIGHTS

- 10.6.42 A version of this article was initially suggested by the ExA, to accord with the Hinkley Point C Connection DCO and added to the Applicant's application dDCO [REP2-016, Q1.5.12]. The wording of the suggested

article was subsequently agreed by the Crown Estate Commissioners as their position on this matter [REP9-008].

10.6.43 During the Examination, the ExA became aware of a further Order, The Triton Knoll Electrical System Order, made by the Secretary of State that included a Crown rights article with differences from that used on Hinkley. This later article no longer read so that Crown consent had to be obtained by the undertaker at a later date in order to exercise compulsory acquisition powers over third party interests in Crown land. We put this to the Applicant on 2 November 2016 [PD-011], but the Applicant declined to use this article in its final dDCO [REP7-003]. The Applicant is however content for either version of this article to be included in the rDCO [REP7-005].

10.6.44 We are however of the opinion that this later article accords with s135 of PA2008. We have therefore included this later article in the rDCO, although we have removed the word 'take' from 22(1)(a) as it is not possible to 'take' land owned by or on behalf of the Crown.

ARTICLE 24 - EXTINGUISHMENT OF PRIVATE RIGHTS AND RESTRICTIVE COVENANTS RELATING TO APPARATUS REMOVED FROM LAND SUBJECT TO TEMPORARY POSSESSION

10.6.45 This article was not contentious. The drafting changes were made at DL2 by the Applicant to reflect the title of the article [REP2-003].

**ARTICLE 28 - TEMPORARY USE OF LAND BY NATIONAL GRID;
ARTICLE 29 - TEMPORARY USE OF LAND BY UK POWER NETWORKS AND ARTICLE 30 - TEMPORARY USE OF LAND FOR MAINTAINING THE AUTHORISED DEVELOPMENT**

Removal of foundations below 1.5 metres

10.6.46 In FWQs, the Panel asked whether IPs were content that the Applicant would not be required to remove any foundations below 1.5 metres, placed in the land to support pylons and electric lines [PD-006, Q1.5.14]. SEW, the NFU and Finns LLP questioned the drafting [REP3-046, and REP2-098].

10.6.47 The NFU and Finns LLP were concerned that the drafting of the article was not clear. The Applicant responded by including new drafting at DL4 as follows: 'to a depth greater than 1.5 metres below surrounding ground level' [REP4-003]. DDC then gave its view that reference to 'surrounding ground level' was also ambiguous and should be made more specific by replacement of the word 'surrounding' with 'adjoining' [EV-071 to EV-077, and REP7-049]. The Applicant agreed and replaced the wording at DL7 [REP7-004].

10.6.48 St John's College, whilst not disagreeing with the power per se, made clear in its representation that it would be content provided that the soil was properly reinstated above and the area properly drained. In its view, if it was not drained, the foundations would become 'wet spots' which would be *"a significant impediment to farming especially*

on drained marshlands such as Docker Hill Farm" on the Ash Level [REP2-092]. The NFU and Finns LLP supported the concern raised by St John's College and asked for confirmation that reinstatement would also include new drains, not just the repair of existing drains, as outlined by the Applicant at DCO1.

- 10.6.49 The Applicant replied by explaining that the depth of 1.5 metres was widely recognised in allowing agricultural practices to take place. It stated that no new drains were considered to be necessary in cases where apparatus was being removed, although it confirmed that existing drains would be repaired if damaged. It explained that new drainage was normally only considered when pylons were installed [EV-021 to EV-024 and REP3-016].
- 10.6.50 The Applicant was then asked by the Panel at DCO1, whether there would be any special circumstances for removal of foundations at a depth of more than 1.5m below ground level. In response it explained that the only special circumstance where removal of the existing PX 132kV route pylon foundations would need to extend beyond 1.5m was in respect of shallow foundations that could extend just beyond 1.5m. In so far as the Ash Level is concerned, the Applicant believed that it would be more practical to avoid the location of any existing foundations or, if required, place the drains to the side of the foundations [REP3-023].
- 10.6.51 At DCO1 Finns LLP also raised the question of contamination to land from any foundations remaining in the land; the NFU adding that it would want to see the Applicant remaining liable for any contamination [REP3-046]. The Applicant made clear that liability for any foundation would remain with the landowner and not National Grid, explaining that when the overhead line is taken down and the pylon removed, the rights in the land revert back to the landowner. Furthermore, Article 28(7) and 29(7)³²⁰ provides that landowners may be entitled to compensation for any loss or damage arising from leaving the foundations in situ [REP3-016]. However the Applicant pointed out that foundations are made of inert concrete and it is not aware of contamination arising from inert structures [REP3-019].
- 10.6.52 SEW argued that the Applicant should be required to remove all foundations whatever their depth [REP2-098]. In response to questions from the Panel at DCO1, the Applicant stated that it had sought to understand in more detail the substance of SEW's objection, given that the PX 132kV line to be dismantled was not located within land under the control of SEW [REP3-019, para 2.43]. The Applicant indicated that it was still awaiting a response from SEW [REP3-023]. At the end of the Examination, no more detail had been received by the Panel on this specific point.

³²⁰ Article numbering changed to reflect the rDCO

- 10.6.53 The ExA is content that 'adjoining' does provide an additional level of drafting clarity and it is included in the rDCO at Article 28(5)(c) and (6)(c) and also at Article 29(5)(c) and (6)(c). Although IPs raised concerns in relation to the drainage of sites where pylons would be removed, the ExA considers that the involvement of both an Agricultural Liaison Officer and a drainage consultant would enable these concerns to be properly addressed. There is precedent for a depth of removal of disused pylon foundations at 1.5 metres in some other made Orders. We are content that this depth is reasonable because although parties representing the farming communities raised matters to do with drainage, they were content with the 1.5m depth providing reinstatement was properly carried out. As there was no further submissions from SEW on the matter of foundation depths, we are content that there are no more relevant points in light of the Applicant's explanation that there would be no foundation removal on SEW's land.
- 10.6.54 The ExA considers the Applicant provided a reasonable response to the matter of possible contamination from foundations. The ExA considers that compensation matters are properly addressed under Article 28 of the rDCO in relation to National Grid and Article 29 in relation to UK Power Networks.

Definition of 'buildings'

- 10.6.55 The NFU and Finns LLP questioned the wording at paragraph 1(c) in Article 28 and Article 29 (temporary use of land in connection with the carrying out of the authorised works) which states "*construct temporary works (including provisions of means of access) and buildings on that land*"; and 1(b) in Article 30 (temporary use of land for maintaining the authorised development) which states "*construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose*".
- 10.6.56 Both parties wanted to understand what types of building were being referred to, although the NFU did accept that there might be a need for 'portacabins' for offices and structures might be required in relation to construction of the pylons or maintenance. The NFU and Finns LLP argued that if the word 'building' was to remain in this and Articles 28(1)(c) and 29(1)(c), then the definition of 'building' in Article 2 would need to be drawn more tightly [REP3-046 and REP7-046]. Furthermore, the NFU added that if the word 'building' were to remain in the dDCO, then the word 'temporary' should be inserted in front of the word 'building' in these Articles [REP7-046].
- 10.6.57 The Applicant explained that the inclusion of a reference to 'building' in Article 30, was only for the duration of the 5 year temporary maintenance period; arguing that it would not enable the construction for example of an office block, but could include a temporary building to house conductors for example [EV021 to EV024].

- 10.6.58 The ExA requested the Applicant give this matter further consideration and to provide a more detailed explanation in a post hearing note after DCO1. In its post hearing note, the Applicant confirmed that the definition of 'building' was not clarified further in the dDCO beyond defining it as "... *any structure or erection or any part of a building, structure or erection*" explaining that this was because any building that may have to be constructed under powers granted by Article 30, would be determined by the nature of the maintenance activity contemplated by the Applicant and so would vary on a case by case basis. Although the Applicant confirmed that 'building' could mean a structure with four walls and a roof; Article 30 includes a 'reasonableness test' at Article 30(1)(b) which requires that any temporary works and buildings on the land must "... *be reasonably necessary for that purpose.*". As such, it did not think that the definition of 'building' required further clarification [REP3-023, Action 20].
- 10.6.59 Whilst the ExA understands the concerns expressed by the NFU and Finns LLP in relation to the types of buildings that could be enabled by Articles 28, 29 and 30, the ExA accepts the explanation provided by the Applicant as to the types of building that are envisaged should the Order be made. In so far as Article 30 is concerned, the ExA is satisfied that the 'reasonableness' test at Article 30(1)(b) would ensure that any proposed temporary buildings constructed during the maintenance period are appropriate to the purpose for which they are required during the maintenance of the authorised development.
- 10.6.60 Articles 28 and 29 relate to buildings constructed in connection with carrying out the authorised development and not during the maintenance period. These buildings are regulated by Article 28(1)(c) and Article 29(1)(c) but do not include any reference to the buildings being 'reasonably necessary'. However the temporary possession powers in relation to the carrying out of the development are limited to a period of one year and they require the Applicant to remove all temporary works and restore the land to the reasonable satisfaction of the owner. In our view, this lends support for the fact that any building constructed must be temporary.
- 10.6.61 As a result, the ExA considers that the meaning of 'building' is clear and the addition of the word 'temporary' is not required before the word 'building' in Articles 28, 29 and 30.

ARTICLE 37 - DEFENCE TO PROCEEDINGS IN RESPECT OF STATUTORY NUISANCE

- 10.6.62 Although the drafting of this article was not contentious, the Applicant noted an error at 37(b)(i). The NVMP is being prepared under Requirement 5 of Schedule 3 (requirements) and not Requirement 6 as stated in the dDCO [REP6-003]. The ExA agrees.

ARTICLE 40 - FELLING OR LOPPING OF TREES

- 10.6.63 In response to the ExA's Q1.5.18 which asked for views in relation to whether a better definition of wording "*near any part of the authorised development*" was required, KCC proposed rewording part of the article to include "*2 metres or any other measurement agreed between the parties*" [REP2-069]. In its capacity as local highway authority, it also explained in a post hearing note, that it wished to ensure sight lines were maintained and that trees and shrubs would not obstruct visibility splays at road junctions [REP3-040].
- 10.6.64 The NFU argued that landowners should be notified of any felling or lopping that was to take place and told what would happen to the timber in this eventuality. The NFU, in response to a question from the ExA at DCO1, undertook to provide evidence of other protocols that are in existence that set out the way in which such matters are handled [REP3-046].
- 10.6.65 At DCO1, the Applicant referred to the fact that under Article 40(1)³²¹ it may only fell or lop trees if "*it reasonably believes it be necessary to do so...*" to prevent obstruction, danger etc (a 'reasonableness test') and the test in 40(2)³²² which would ensure that lopping and removal must not cause unnecessary damage and therefore that it did have "*the necessary checks and balances in place*" [EV-021 to EV-024].
- 10.6.66 The Panel requested the Applicant to set out in more detail the way in which landowners would be notified of any intention to fell or lop trees on their land [EV-021 to EV-024]. In its response, the Applicant explained that it followed the guidelines as set out in the Energy Networks Association Engineering Technical Report: 136 – Vegetation Management near Electricity Equipment – Principles of Good Practice (Technical Report 136) [REP3-023, Appendix B]. It also explained that it was normal practice for its Land Officer/ Land Agent to hold detailed discussions with landowners prior to any works being undertaken, setting out the steps that the Land Officer/ Land Agent would follow including the purpose for the proposed works, whether timber should be left on site and implications for any biosecurity measures [REP3-023].
- 10.6.67 At DCO2 and DCO3, the NFU continued to make the case for reference to Technical Report 136 and the steps to be taken by the Land Office/ Land Agent to be secured in the DCO. The Applicant argued it would adopt the procedures as good practice and did not consider it necessary or appropriate to secure these in the dDCO; and that they are not secured in other DCOs for overhead lines [REP7-009]. We considered the NFU's requests, but decided not to amend Article 40 of the dDCO to refer to the Technical Report 136 or the steps because we give weight to the reasoning put forward by the Applicant regarding

³²¹ Amended to refer to rDCO numbering (previously Article 41)

³²² Amended to refer to rDCO numbering (previously Article 41)

this being an industry standard which it would adopt. This is reported in Section 5.2 of our report.

ARTICLE 41 - TREES SUBJECT TO TREE PRESERVATION ORDERS

- 10.6.68 Article 41(2) was removed at the request of the ExA following Q1.5.19 because it considered the provision to be contrary to advice in PINS Advice Note 15 Drafting Development Consent Orders which states at paragraph 24.2: "*Applicants may also wish to have a general power to fell, lop or cut back roots of trees subject to a tree preservation order (TPO). This power should not however be used as a precautionary measure and should, generally, only be applied to trees which are subject to TPOs, or otherwise protected by virtue of being situated in a conservation area, prior to the making of the DCO. This is so as to allow proper consideration and examination of the particular characteristics that gave rise to the special protection given to such trees and the desirability of continuing such protection*". The Secretary of State deleted a similar provision in the Hinkley Point C Connection DCO (S.I. 2016/49].

ARTICLE 43 - CERTIFICATION OF PLANS

- 10.6.69 Definitions for all the documents to be certified under Article 43 are included in Article 2 - Interpretation. The NVMP was added as a document to be certified at DL4 following its inclusion in the CEMP secured by Requirement 5. The Location Plan was also added at DL7 by the Applicant for completeness.
- 10.6.70 We asked the Applicant to justify why the Environmental Statement (ES) [APP-028 to APP-118 inclusive] was not included as a document to be certified by the Secretary of State [PD-006, Q1.5.20]. The Applicant explained that in its view, documents are typically certified where they limit the proposed development, stating that the ES identifies the likely significant effects of the scheme but does not limit the proposed development. However, where mitigation is mentioned in the ES, it would be captured in one of the documents that is certified in accordance with Article 43. The Applicant also referred to the amendment to the definition of the ES during the Examination in Article 2 [REP2-016]. This would ensure that the definition includes references to any additional documents or errata submitted to the ExA, which are included in the ES Consolidated Errata and Changes Document [REP7-015].
- 10.6.71 The Applicant also argued that it would be a burdensome and unnecessary task for the Secretary of State to certify such a large document, referring the position adopted in the recent Hinkley Point C Connection DCO (S.I. 2016/49) where it was confirmed that the ES did not have to be certified [REP2-016].
- 10.6.72 The ExA did not receive other representations from IPs in on this matter and we are satisfied with the reasoning put forward by the Applicant.

ARTICLE 47 - AMENDMENT OF LOCAL LEGISLATION

10.6.73 We asked whether the drafting of this article should follow the approach taken in the Hinkley Point C Connection DCO [SI 2016/49] where 49(2) was removed by the Secretary of State but 49(3), which provides a procedure for clarifying whether anything done by the undertaker would breach local legislation/ byelaw or not, was retained. The Applicant agreed and deleted Article 49(2) from the dDCO submitted at DL2 to follow the approach taken in the Hinkley Point C Connection DCO [REP2-003].

10.7 SCHEDULES

SCHEDULE 1

- 10.7.1 The Applicant included the word 'scaffolding' at the request of the ExA under associated development (i) and (j) and deleted it from (l) in the interests of greater precision. In response to the Panel's hearing action points list [EV-070, Action 20], the Applicant also included the word 'temporary' in (j) where appropriate to reflect the transient nature of such activities [REP7-008].
- 10.7.2 The ExA questioned whether the provisions (l) and (m) were overly expansive given that they had been removed by the Secretary of State from the Hinkley Point C Connection DCO [PD-006, Q1.5.28]. The Applicant argued that provisions (l) and (m) were necessary and should not be removed from the dDCO as they provide powers which, they argued, were necessary for the construction and maintenance of the authorised works. The provisions intentionally do not reference specific works (as subsections (a) to (k) do) to allow the Applicant to be able to carry out associated development which in its view, could not be fully predicted before the final design or construction stages.
- 10.7.3 The Applicant went on to set out the way in which it was ensuring that the provisions would not be overly expansive by the inclusion of the requirement for the works to be, "*necessary or expedient for the purposes of or in connection with the construction of the authorised development*", and that they must also "*not give rise to any materially different environmental effects from those assessed in the Environmental Statement*".
- 10.7.4 The ExA considers that the Associated Development described in (a) to (k) provides the Applicant with the scope to carry out a wide variety of works that might be necessary for the purposes of or in connection with the works set out in Schedule 1. The ExA also notes that there is precedent in other made Orders for the deletion of both sub-paragraphs (l) and (m), for example the Hinkley Point C Connection Order. Having considered the Applicant's argument with regard to the need for necessary, but unknown works to be included in the definition of Associated Development, the ExA understands the intent, but considers that there should be more precision regarding both the

necessity for such works and certainty that such works have been assessed in the ES.

- 10.7.5 Accordingly the words 'or expedient' and 'materially' should be deleted from (l) and (m). Sub-paragraph (l) would therefore read: "*(l) such other works, including working sites storage areas, and works of demolition, as may be necessary for the purposes of or in connection with the construction of the authorised development and which do not give rise to any different environmental effects from those assessed in the Environmental Statement*". Similarly sub-paragraph (m) has the same words which should be removed. It would therefore read: "*(m) such other works as may be necessary for the purposes of or in connection with the maintenance of the authorised development and which do not give rise to any different environmental effects from those assessed in the Environmental Statement*". These changes have been included in the rDCO.
- 10.7.6 In reaching this view the ExA has also given some weight to the engrossed s106 agreement, which contains a service level agreement at Schedule 3, whereby the relevant local authorities would be reimbursed reasonable additional costs for dealing with submissions regarding Authorised Development (which includes associated development) such as under Requirement 4.

SCHEDULE 2 - PLANS AND DRAWINGS

- 10.7.7 Only minor edits were made to this Schedule. Kent County Council confirmed at the DCO1 that it was content that the plans and drawings were accurately referenced [EV-021 to EV-024]. To address the repositioning of Pylon PC10, as recommended in Chapter 6, the relevant design drawing should be replaced as set out in Table A of this chapter.

SCHEDULE 3 - REQUIREMENTS

- 10.7.8 The draft requirements flow from a number of sources: model provisions; the precedent established by other made Orders; and one bespoke requirement in respect of ancient woodland. There was extensive debate over the details of the requirements, resulting in many amendments and redrafting.

Requirement 1 - Interpretation

- 10.7.9 Definitions have been added to this requirement in response to questions from the Panel and written and oral representations by IPs. The requirement now includes definitions for the plans, schemes and strategies of the construction mitigation plans referred to in Requirement 6 of the dDCO; the Concept Mitigation Planting Plan referred to in Requirement 8; the Tree and Hedgerow Planting Strategy referred to in Requirement 10; and the Ancient Woodland Easement Management Plan referred to in Requirement 20. The requirement also includes a definition for "*start up and close down activities*" given effect by Requirement 7 - Construction Hours.

10.7.10 Definitions of relevant planning authority and relevant highway authority have been deleted from this requirement because they are included within Article 2. References to heavy goods vehicles (HGV) were also deleted at DL2 because the Applicant explained it had included these in error [REP2-001 and REP2-003]. The ExA is satisfied that these are minor amendments and is content to include these in the rDCO.

10.7.11 One matter which generated considerable discussion during the Examination, related to the use of tailpieces. We asked the Applicant to justify their inclusion in our FWQs and we returned to the topic at the DCO ISHs. In setting out its explanation, the Applicant referred to Requirement 1(3) as providing the means through which the power to approve details other than in accordance with the plans, strategies and schemes would be limited to minor and immaterial changes where it could be demonstrated that they are unlikely to give rise to any materially new or different environmental effects.

10.7.12 It seems to the Panel that, as currently drafted, the requirement could be interpreted as meaning what the Applicant's stated intention is, but it could also be interpreted as only applying to minor and immaterial changes and thus permitting any other changes to take place even if they did have materially different environmental effects. As such, the Panel is proposing minor amendments to the wording of this requirement so remove the potential for ambiguity.

10.7.13 The dDCO drafting at R1(3) is as follows:

"(3) Where an approval is required under the terms of any Requirement or a document referred to in a Requirement, or any Requirement specifies "unless otherwise approved" or "unless otherwise agreed" by the highway authority or the relevant planning authority such approval or agreement may only be given in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement."

10.7.14 The Panel's revised wording for the rDCO for R1(3) is as follows:

"(3) Where an approval is required under the terms of any Requirement or a document referred to in a Requirement, or any Requirement specifies "unless otherwise approved" or "unless otherwise agreed" by the highway authority or the relevant planning authority such approval or agreement may only be given if the changes are minor or immaterial and where it has been demonstrated to the satisfaction of the highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different

environmental effects from those assessed in the Environmental Statement."

- 10.7.15 The Applicant's response in relation to specific requirements and our reasoning is included in the sections that follow.

Requirement 3 - Design drawings

- 10.7.16 The drafting of this requirement caused concern amongst IPs and the Panel over whether, by allowing the proposed development to be carried out 'in general accordance with' the design drawings, it would therefore permit some element of uncertain deviation from the design drawings which form part of the application and have been considered during the Examination.
- 10.7.17 The Panel asked written questions and discussed this at some length with the Applicant and local authorities during DCO1 and DCO2. The Panel was concerned that inclusion of the word 'general' made it very difficult for the relevant planning authorities to enforce the requirement if the Applicant did not comply with it [PD-006, Q1.5.32; EV-021 to EV-024; EV-035 to EV-038].
- 10.7.18 The Applicant explained that the word 'general' was to enable "*a necessary but proportionate degree of flexibility*" [REP2-016]. It explained that the design drawings were indicative and not final, to reflect the fact that detailed design could only be finalised once a contractor had been appointed prior to the actual works being carried out. The Applicant explained that the design drawings (set out in Part 2 of Schedule 2) provided greater detail regarding the works that would be undertaken as part of the Authorised Development. In turn, these works (set out in Schedule 1), would be subject to vertical and horizontal LoD to allow flexibility, particularly in relation to pylon location given local ground conditions.
- 10.7.19 As a result of these factors, the Applicant argued that the works would need to be 'in general accordance' with the design drawings to reflect this flexibility. The Applicant also referred to the SoCG with the local authorities. This confirmed that despite their earlier misgivings, the local authorities were now in agreement with the Applicant over the wording of this requirement and the necessity for it [REP2-024, I.D 4.20.4].
- 10.7.20 The Applicant did however, propose inclusion of a new sub-paragraph (2), to make clear that the authorised development would not be in general accordance "*where the extent of departure from the design drawings gives rise to any materially new or different environmental effects*" [REP2-016 and REP2-003].
- 10.7.21 At DCO1, the Panel asked the local authorities whether they wished to comment on the Applicant's response to the Panel's FWQ and in particular, its explanation of 'general accordance'. The local authorities confirmed that they were content with the drafting of the requirement.

10.7.22 The Panel questioned the need for the inclusion of the tailpiece in Requirement 3(1). In our view, this was not necessary and would provide too much flexibility. The Applicant argued that the tailpiece was restricted by the inclusion of Requirement 1(3), which states that *"such approval or agreement may only be given in relation to minor or immaterial changes"*. It explained that it was seeking proportionate and limited flexibility in order to ensure that the delivery of the project would not be unduly delayed [REP2-016].

10.7.23 The Panel probed further into the need for this tailpiece at DCO2. In our view, even when qualified with the inclusion of Requirement 1(3) (and the changes we propose in relation to the wording of this 3(1) discussed earlier in this section), the tailpiece would allow too much flexibility, given the central importance of the requirement in the dDCO. The tailpiece could enable the opportunity for post-consent changes to certified design drawings which set out the details of what is proposed to be consented. This could in the Panel's view, trigger a fundamental change to the proposed development and what was intended. The Applicant reflected on the ExA's comments, proposing deletion of the tailpiece at DL6 [REP6-003].

Requirement 4 - Stages of authorised development

10.7.24 It was not clear to the Panel or to the local authorities what the stages of the authorised development were and hence the clarity of the requirement was lacking. We asked written questions and probed the matter at all three DCO hearings during the Examination.

10.7.25 In response to FWQs, the Applicant explained that stages would only be defined after a construction contractor was appointed and that these stages would be defined by activities [REP2-016, Q1.5.33].

10.7.26 At DCO1, it was evident that the Applicant's response had caused confusion amongst the Panel and the local authorities. The local authorities argued amongst other things, that the stages should be geographically based; that the details to be submitted should include a defined plan showing the location that the stage related to as well as the relationship between that stage; and that the preceding and acceding stages should be included [EV-021 to EV-024]. After extensive discussion, matters were still unclear and so the Applicant agreed to provide a post hearing note at DL3 with a fuller explanation of 'stages'.

10.7.27 The post hearing note explains that the reference to 'activities' reflects that stages would not necessarily be defined solely by reference to geographical location or by activity because both terms are used interchangeably by the Applicant for much of the works contemplated. However, the Applicant confirmed that the written scheme setting out all of the stages would include references to defined sections or part of the authorised development. The Applicant provided two examples to aid understanding. Firstly, the construction of the 400kV overhead line (Work No. 1), the Applicant explained, could be a stage of the

authorised development in itself. Secondly, the removal of the existing 132kV overhead line could also be a stage. Each stage of any part of the authorised development (for example removal of the PX 132kV line) could be undertaken as one stage or broken down further. The Applicant confirmed that this level of detail would form part of the written scheme as required under Requirement 4, to be submitted to and approved by the local authorities [REP3-023].

- 10.7.28 The Panel also asked whether the requirement should include a new sub-paragraph to enable the planning authority to be kept informed of each stage, proposing draft wording as follows: "*4(2) Written notice of the commencement and completion of each stage of the authorised development and the operational use of that part of the authorised development must be given to the relevant planning authority within ten business days of the relevant event occurring.*" The Applicant agreed and this was inserted at DL2 [REP2-003]. However, following further discussion at DCO3, the Applicant altered the wording of 4(2) to make clear that written notice would be given to the relevant planning authority 'before' 'commencement' and 'operation' and 'after' 'completion' [REP7-001 and REP7-004].
- 10.7.29 The Panel gives weight to the signed SoCG with the Joint Councils as the discharging authorities for many of the requirements, which confirms that they are content with the Applicant's explanation of stages and the Applicant's confirmation that it would work closely with the local authorities in preparing and agreeing the written scheme required under 4 (2) [REP8-014]. The ExA is therefore now satisfied that the intent of the requirement is clear and includes it in the rDCO.

Requirement 5 - Construction Environmental Management Plan

- 10.7.30 In response to RRs from CCC and DDC [RR-068, RR-029] that an NVMP was to be agreed as a way of providing satisfactory mitigation, the Panel asked whether this should be secured as part of the CEMP in Requirement 5(2), rather than as a plan to be submitted for approval under Requirement 6(1). The Applicant confirmed its intention to do so once the NVMP was agreed with the local authorities, hence its inclusion into the dDCO at DL4 [REP4-003].
- 10.7.31 The Panel also questioned whether the words: "*accompanied by the following plans, scheme and strategy-*" be changed to: "*includes the following plans, scheme and strategy-*" so that it was clear that the documents were integral elements of the CEMP. The Applicant included the amendment at DL4 [REP4-003].
- 10.7.32 The Applicant included references to consulting Natural England (NE) in relation to the Biodiversity Mitigation Strategy (BMS) at 5(4) in response to discussions with NE [REP2-001]. At DL7, the Applicant proposed inclusion of the phrase 'where required in accordance with its statutory duty' to emphasise that NE would not need to be consulted on all matters including those in which it had no interest [REP7-001]. The ExA does not consider this additional phrase to be

precise or enforceable and therefore proposes it is deleted from the rDCO.

- 10.7.33 At DCO2 the Panel asked whether the Outline Waste Management Plan (OWMP) was correctly titled [EV-035 to EV-038]. The Applicant explained that the OWMP [APP-065] was a standalone document forming part of, and incorporated into, the CEMP ([REP4-006]. The intent is that the OWMP would be certified by the Secretary of State. The detailed site plans provided for in Requirement 6 would be informed by, and must incorporate the relevant recommendations and requirements specified in the CEMP and supporting overarching plans, scheme and strategy provided for in Requirement 5. To make clearer the distinction between the two plans the overarching plan (Requirement 5) is referred to as the 'OWMP' as opposed to the site specific Site Waste Management Plan provided for in Requirement 6. The reference to 'Outline' could be removed from the definition but in the Applicant's view this reference helps make clearer the distinction between the two documents [REP4-013].
- 10.7.34 The most contentious element of the requirement related to the use of tailpieces. The Panel asked the Applicant why it considered the inclusion of tailpieces throughout the requirement to be necessary [PD-006, Q1.5.34]. In response the Applicant referred again to the limiting effect of Requirement 1(3). As before, the Applicant argued that it was seeking proportionate and limited flexibility in order to ensure that the delivery of the nationally significant infrastructure project was not unduly delayed. Such flexibility it considered to be appropriate to take into account any changes in circumstances which may warrant or necessitate small changes to the CEMP, with the agreement of the local authority and highway authority.
- 10.7.35 The Panel were not convinced by the Applicant's reasoning in respect of the use of tailpieces in this requirement and asked further questions at DCO1 and DCO2. The Applicant maintained its view that the tailpieces included at R5(1), (3) and (4) were necessary and reasonable.
- 10.7.36 It seems to the Panel that the CEMP, and the plans, schemes and strategies included within it, have been fully explored during the Examination. A number of updates were made to each of the documents in response to discussions with the Joint Councils and questions from the ExA and agreement reached with the Joint Councils on the contents of each of them.
- 10.7.37 The CEMP deals with important matters of mitigation that are central to the rDCO. The definition of each document in R5(2) is provided in Article 2, whilst Article 43 ensures that the CEMP and all documents in R5(2) will be certified. At the close of the Examination, we were satisfied with the contents of the CEMP and the plans, schemes and strategies. As such, we do not see the need for these to be revisited and if there is a need to revisit them, then PA2008 provides a route to do this via a non-material change application to the Secretary of

State. In our view the CEMP and the plans referred to in R5(2) should be fixed and not capable of amendment outside PA2008 process. For this reason, we propose the deletion of the tailpieces in R5(1), (3) and (4).

Requirement 6 - Approval and implementation of construction mitigation plans

- 10.7.38 As part of its application documentation, the Applicant had provided information about some but not all of the plans identified in Requirement 6; explaining that these were the detailed plans that would be prepared by the main contractor [EV-021].
- 10.7.39 Whilst CCC and DDC did not disagree with the suite of construction mitigation plans, schemes and strategies identified in the requirement, they requested more details to enable the local authorities to ensure consents and permissions were compliant [REP2-063 and REP2-065]. NFU also requested more detail specifically in relation to the Soil and Aftercare Management Plan and the Drainage Management Plan. The former to include clarification of how soils would be treated prior to construction, during construction and post construction and the latter to include field drainage, the detail of which NFU set out in Appendix 3 of its Written Representation [REP2-074]. The NFU wanted more detail and their reasons for this relating to compulsory acquisition are addressed in Chapter 9.
- 10.7.40 The ExA requested the Applicant to provide a post hearing note with outlines of the following documents referred to in Requirement 6:
- (a) Soil and Aftercare Management Plan;
 - (b) Drainage Management Plan;
 - (c) Pollution Incident Control Plan;
 - (d) Lighting Scheme;
 - (f) Site Waste Management Plan; and
 - (h) Travel Plan.
- 10.7.41 We did not request inclusion of the Trees and Hedgerow Protection Strategy given its different treatment as set out in Requirement 10. The Applicant's Flood Risk Assessment [APP-111] provides an outline of the procedure to be followed during flood events and elements that should be specified in the construction contractor's Emergency Response Plan for Flood Events. This plan would be subject to approval by the RPA after consultation with the EA under rDCO R6(1)(e). We are content with this approach bearing in mind that much of the detail in the plan would be dependent on the contractor's working arrangements³²³.
- 10.7.42 In response at DL3, the Applicant provided a signposting document setting out where the detail of each document was provided in the

³²³ EN-1, para 5.7.25

DCO application. It also argued that it considered the level of detail already provided in relation to the plans and schemes was sufficient for the stage of the project. In its view, the detail of each plan could not be confirmed until after the completion of detailed design and pre-construction surveys was undertaken by the main works contractor. Furthermore, in relation to the Site Waste Management Plan (listed in Requirement 6), an OWMP [APP-065] was submitted as part of the application [REP3-023, Appendix C].

- 10.7.43 In SWQ, the Panel questioned whether the Travel Plan should be a separate requirement [PD-009, Q2.5.7]. The Applicant argued against this, stating that the travel plan was a construction management plan and that detail could only be provided at the detailed design stage and so it was not appropriate for it to be included as a plan to be certified by the Secretary of State. The Construction Traffic Management Plan which would be a certified document provides an outline of the Travel Plan. The Applicant also referred to the SoCG between the Applicant and KCC. This confirmed KCC's view that the outline Travel Plan should not be a separate requirement; KCC adding that in its view, the number of staff on any individual site at any one time would not be significant [REP4-009].
- 10.7.44 In SWQs, we questioned whether NE should be added to Requirement 6(1) in the same way as the EA was referenced in the requirement [PD-009, Q2.5.8]. The Applicant agreed and included this reference in the dDCO at DL4 [REP4-003].
- 10.7.45 In response to Q2.11.3, KCC requested inclusion of a reference to its role as Lead Local Flood Authority (LLFA) in relation to those to be consulted at R6(1) [REP4-026]. At DL7, the Applicant amended the definition of 'relevant drainage authority' at R1(1) to include the LLFA as follows: *"the relevant drainage authority means, in any given requirement, the relevant drainage authority or the LLFA for the area to which the requirement relates."* [REP7-004]. We are satisfied that this amendment addresses KCC's concerns and we include this in the rDCO.
- 10.7.46 In Q2.5.9, we asked whether, as currently drafted, the tailpiece would allow non-compliance with plans/ schemes which would be contrary to Planning Inspectorate Advice Note 15 - Drafting DCOs. This states at paragraph 19.4 *"On the other hand, a requirement might make the development consent conditional on the LPA approving detailed aspects of the development in advance (for example, the details of a landscaping scheme). Where the LPA (or other discharging body) is given power to approve such details it will be acceptable to allow that body to approve a change to details that they had already approved. However, the tailpiece (or other wording) should not allow the LPA to approve details which stray outside the parameters set for the development as part of the examination process and subsequent approval of the Secretary of State."*

- 10.7.47 We proposed an alternative form of wording to overcome this concern. *"(2) The construction works for each stage must be carried out in accordance with the approved plans and scheme referred to in subparagraph(1) or with any amended plans or scheme that may subsequently be approved in writing by the relevant planning authority."* The Applicant agreed and updated the dDCO at DL4 [REP4-003].
- 10.7.48 At DCO2, the NFU questioned the relationship between R5 and R6. The Applicant explained that the CEMP included references to the R6 documents, providing an outline of what each should contain. In its view, the plans, schemes and strategies were in effect, discharge mechanisms [Second DCO and REP5-019]. Although the NFU pushed for a reference to the CEMP in R6, the Applicant resisted, arguing that there was sufficient linkage to the CEMP [EV-035 to EV-038 and REP5-019].
- 10.7.49 The Panel received written and oral submissions from Nethergong Camping which maintained its objection to the proposed development throughout the Examination, in essence due to the effect of the proposed project on its business. The detail of its objection is discussed more fully in Chapter 5. In our SWQ, we proposed introduction of a new requirement within the dDCO that would restrict construction activities at Pylons PC26 and PC27 (the pylons nearest to the campsite), between May and September. Nethergong Camping supported the proposed requirement. The Applicant did not and suggested an alternative approach of including two new paragraphs in the CEMP that would restrict construction activities at PC26 and PC27 between May and September [REP6-021]. The Applicant also stated that it had met with Nethergong Camping to explain the proposed provisions [EV-035 to EV-038 and REP6-004, Action Point 31].
- 10.7.50 The Panel was not convinced by the approach set out by the Applicant and as part of a Rule 17 request, included a draft requirement relating to PC26 and PC27 in the draft dDCO. The Applicant resisted this because it argued, the CEMP would achieve the same result.
- 10.7.51 The Panel has recommended the removal of the tailpieces in relation to the CEMP in R5 for the reasons it set out in the previous section. On this basis, we are satisfied that there is no need for a separate requirement in relation to PC26 and PC27 because of the additional information included in the CEMP, which would be a certified document under R5. Should the Secretary of State be minded to retain the tailpieces in R5, then we would recommend inclusion of an additional requirement specifically in relation to Nethergong Campsite in the rDCO to overcome concerns that the wording of the CEMP in relation to PC26 and PC27 might be altered at a later date.

Requirement 7 - Construction hours

- 10.7.52 DDC, CCC and Thanet District Council did not agree with the original wording of this requirement for a number of reasons, including the

potential for construction work to take place on consecutive weekends. The local authorities explained that they were in discussion with the Applicant over these detailed matters, and that they were seeking to reach agreement on the way forward as part of their discussions on the NVMP. Section 5.6 of our report discusses the concerns of the local authorities in relation to construction hours in more detail.

- 10.7.53 During the Examination, the Applicant inserted new drafting at DL4 and DL6 to address the concerns of the local authorities. This included R7(2) which restricted working to two out of any four alternate weekends; R7(4) which would impose restricted working hours at specific noise sensitive locations identified in the NVMP; and R7(5) to ensure that the restricted working hours would include one hour start up and close down activities that would not cause 'audible disturbance' to residents. The Applicant also included at DL6 a definition in R1 of 'start up and close down activities'.
- 10.7.54 The local authorities were content with these changes to R7 as reported in their final signed SoCG. The local authorities also confirmed that they had reached agreement over the contents of the NVMP at the close of the Examination. The ExA has no reason to disagree with the local authorities over the detail of changes made at R7(2), (4) and (5).
- 10.7.55 Requirement 7 also includes tailpieces at R7(1), R7(2) and R7(4). It seems to the Panel that these tailpieces are not necessary given that the local authorities have expressly requested inclusion of additional detail in these sub-paragraphs and that the NVMP referred to in R7(4) is an agreed document to be certified as part of the CEMP under Article 43 of the rDCO and, as such, forms essential mitigation for the proposed development. The ExA therefore proposes the deletion of the tailpieces at sub-paragraphs (1), (2) and (4) of Requirement 7 and has removed them from the rDCO.

Requirement 8 - Mitigation planting

- 10.7.56 A number of changes were made to this requirement during the Examination in response to written and oral questions, including insertion of 'reflect' at R8(1) of the dDCO to demonstrate that the Concept Mitigation Planting Plan (CMPP) is indicative only and that the final detailed scheme required by R8 of the dDCO may not be exactly as that shown on these plans. However it must accord with the Arboricultural Impact Assessment and BMS to ensure it delivers the mitigation assessed in the ES [REP7-003].
- 10.7.57 At DL6, the Applicant amended the requirement further in response to comments made by Kent County Council at DCO2, providing details in relation to the planting scheme, including matters such as the quantity and size of planting, the location of areas for natural regeneration and stock provenance. In addition, the Panel requested that consideration be given to the identification of opportunities for early planting during,

as well as after, implementation of the authorised development. This was included at R8(2)(d) of the dDCO [REP7-004].

- 10.7.58 Addition of the reference to 'provenance' of plant material was sufficient to allay concerns we had regarding the Woodland Trust's agreement of matters in relation to new planting near to ancient woodland, which was subject to the use of locally sourced plant material. This is covered in more detail in Section 5.5 of our report.
- 10.7.59 Given the indicative status of the CMPP³²⁴ the Panel is content with the use of the word 'reflect' in this requirement. We also consider amendments in relation to the planting scheme that would be submitted to provide helpful clarity. As such, R8 of the rDCO includes all amendments made by the Applicant. We are satisfied with the amendments made.

Requirement 9 - Implementation of mitigation planting

- 10.7.60 At DCO2, we asked the Applicant to include within the requirement details of the trigger point for implementing planting in relation to the removal of the existing PX 132kV line, because in the requirement's initial drafting the implementation timing related only to bringing the 400kV line into operational use and did not relate to dismantling works. R9(1) of the dDCO provides this amendment [REP7-004].
- 10.7.61 The Applicant also removed all references to 'landscaping' as during the Examination it was confirmed that all planting covered by this requirement is mitigation planting, so there is no need to differentiate. This removed potential confusion.
- 10.7.62 As these points address the concerns of the Panel, we are satisfied with the amendments to this requirement, and it is included in the rDCO.

Requirement 10 - Retention and protection of existing trees and hedgerows

- 10.7.63 The Applicant states at DL4 that this requirement was updated in response to Q2.5.11 to include references to additional addenda provided at DL3 and DL4. The Applicant also updated R10(2)(b) to refer to hedgerow removal as well as tree removal [REP6-001]. The Applicant also states that it has amended R10(2)(a) of the dDCO submitted at DL4 to provide greater clarity on the alignment of temporary physical tree and hedgerow protection measures, which now includes, where practicable, a minimum 5 metres stand-off from hedges [REP6-001 and REP4-003]. This was added in response to Q2.5.11 [REP4-014] to ensure that physical hedge protection measures meet a stand-off distance greater than that set out in BS

³²⁴ Discussed in detail in Section 5.2

5837:2012³²⁵ (to which R10 refers), wherever possible to accord with the aspirations stated in the ES.

- 10.7.64 The Panel is satisfied with these amendments because they add clarity, and we include them in the rDCO.

Requirement 13 - Contaminated land and controlled waters

- 10.7.65 We questioned whether the title of the requirement should be 'Contaminated land and groundwater', asking the Applicant what 'controlled waters' referred to in this context. In response, the Applicant explained that Controlled Waters is defined by the Water Resources Act 1991 (WRA), Pt III (Part 3), and that the WRA definition of Controlled Waters had been added to the definitions of the draft DCO submitted at DL2 [REP2-003]. In the Applicant's view, controlled waters is a more accurate term, because this definition also includes surface and other waters in line with the WRA definition, and would therefore ensure that the DCO Requirement is suitably protective of all relevant water bodies [REP2-016]. We are satisfied with this explanation.
- 10.7.66 Drafting changes were also made to R13(3) at the request of the EA and inserted into the dDCO at DL2 [REP2-003]. In essence, this makes clear that a written scheme should be approved by the relevant planning authority after consultation with the EA, to deal with the associated risks from contamination not identified in the Land Contamination Desk Study.
- 10.7.67 The ExA has no reason to disagree with the requested inclusion of R13(3) by the EA and it is included in the rDCO.

Requirement 14 - Inspection of temporary watercourses

- 10.7.68 KCC requested that it be added to the list of bodies to be consulted at R14(1), because of its role as LLFA [REP4-026, Q2.11.3]. As we discuss at R6 earlier, the Applicant amended the definition of "*relevant drainage authority*" at R1(1) to include the LLFA [REP7-004]. We are satisfied that this amendment addresses KCC's concerns and we include this in the rDCO.

Requirement 18 - Removal of UK Power Networks works

- 10.7.69 The ExA has proposed a minor amendment in the rDCO to the drafting of this requirement, with the deletion of the words "*at the earliest opportunity and*" which it considers to be insufficiently precise.

³²⁵ Trees in relation to design, demolition and construction. Recommendation

Requirement 20 - Ancient Woodland Easement Management Plan

- 10.7.70 As set out in Section 5.5 there was considerable discussion during the Examination in relation to ancient woodland. As a result of concerns raised by IPs over the management of easements in ancient woodland, we issued a Rule 17 request which included, amongst other things, proposed drafting for a new requirement in relation to this matter. Following discussion of the Rule 17 request at DCO3, the Applicant inserted at DL7 a bespoke requirement which would secure the preparation of an Ancient Woodland Easement Management Plan (AWEMP).
- 10.7.71 The ExA is content with the drafting of the requirement, subject to two amendments. Firstly, deletion of the words "*at the earliest opportunity*" which it considers to be insufficiently precise. Secondly, deletion of the tailpiece at R20(4). This would have permitted the local planning authority to agree that woodland management operations do not have to be carried out in accordance with the AWEMP, which would be inconsistent with the intent of the requirement to secure the production of an AWEMP. With these two amendments, the ExA recommends the inclusion of R20 in the rDCO.

SCHEDULES 4 TO 7

- 10.7.72 Although amendments have been made to Schedules 4 to 7, the Panel considers these amendments to be minor editing only. Two exceptions are:
- (i) in Schedule 4, Requirement 5(1), the definition of relevant authority has been widened to include 'relevant drainage authority' [REP7-004] after KCC as LLFA raised this as a concern in response to Q2.11.3 [REP4-026]. See also our discussion of this point in relation to Requirement 6 and 14; and
 - (ii) in Schedule 6, the inclusion of Westbere Compound at DL2 in response to the Panel's Q1.5.8 to rectify its accidental omission from the application dDCO [REP2-003].

SCHEDULES 8 AND 11

- 10.7.73 The Applicant has made amendments to Schedules 8 and 11, as a result of changes in the ownership of land plots which have occurred since submission of the Application, following a refresh of the Book of Reference [REP7-004, and REP8-005 to 007]. The Panel considers these to be minor amendments only.

SCHEDULE 9 - DEEMED MARINE LICENCE

- 10.7.74 Although changes were made to the Deemed Marine Licence (DML) over the course of the Examination in response the majority of these are, in the Panel's view, minor editing matters.

- 10.7.75 At DL2, three more substantial amendments were inserted into the draft DML by the Applicant in response to Q1.5.27; Q1.5.57 and Q1.10.29 [PD-006] and ongoing discussions with the MMO. These amendments are:
- (i) Condition 3 (2): clarification of licenced activities by inclusion of reference to Work No 1; and inclusion of a reference to the installation of two temporary long span bridges across the River Stour as part of the authorised development [REP2-003];
 - (ii) Condition 8: the need for the licence holder to inform not just the MMO, but also the EA, Great Stour Downstream Interest Group and the Sandwich Harbour Master in writing of the intended start date and the likely duration of activities prior to commencement of the first licensed activity [REP2-003]; and
 - (iii) Condition 12: inclusion of the reference to '*current best practice measures*' at the request of the MMO [REP2-003].
- 10.7.76 The proposed amendments were not considered contentious by the MMO as confirmed in its final signed SoCG which records that there were no principal matters outstanding at the end of the Examination [REP7-012]. Neither did the Panel receive representations in relation to these amendments from any other IPs. Given this, the Panel is content to include these amendments in the draft DML.
- 10.7.77 The one area where agreement was not reached between the MMO and the Applicant at the end of the Examination, relates to the timescale for provision of the detailed Method Statement at Condition 7(1) of the DML. The Applicant argued that the works would be of a minor nature and therefore proposes submitting a detailed method statement '*at least 20 business days prior to the commencement of the first licenced activity for approval by the MMO*' [REP7-004].
- 10.7.78 At Annex 1 of the final SoCG with the MMO, the Applicant explains that the proposed works would be:
- two crossings of the new overhead line over the River Stour between PC51 and PC52 and between PC60 and Richborough substation;
 - dismantling of the existing UKPN 132kV overhead line which crosses the River Stour in two locations between PX68 and PX69; and between PX77 and PX78; and
 - the installation of two temporary long span bridges across the River Stour in two locations: just south of Minster and just west of the old Power Station site at Richborough [REP7-012].
- 10.7.79 The Applicant confirms that the River Stour would not need to be closed for the total duration of the works, but would be required to be closed for specific days to install or remove protective scaffold nets, long span bridges or conductors [REP7-012]. The detailed works programme is set out in the indicative construction programme [REP6-025]. It includes proposed closures of the River Stour lasting approximately half a day where netting of protective scaffolds would

be required, and approximately two or three days for the installation and removal of the temporary bridges [REP7-012, Annex 1].

- 10.7.80 The MMO argues that the Method Statement should be provided for approval at least two months' prior to the commencement of works. It put forward alternative wording to Condition 7(1) as follows: *"The Method Statement must be submitted to the MMO for approval at least 2 months prior to the commencement of works. Licensed activities must not commence until written approval is provided by the MMO"*. [REP7-012].
- 10.7.81 The Panel is of the view that the Method Statement would need careful discussion between the Applicant and the MMO before its contents could be agreed and written approval provided. It would be a detailed document, controlling a number of separate activities, affecting different parts of the River Stour. The Applicant's proposal of 'at least 20 business days' does not, in the Panel's view, provide sufficient certainty that the MMO would have adequate time to consider and respond to the receipt of the draft Method Statement; for the Applicant to subsequently reach agreement with the MMO over a final form of wording; and for the MMO to issue its written approval. The MMO proposes that a period of two months be provided to enable them to consider and approve the Method Statement. To our mind, this is a realistic timeframe for discussion and approval of the Method Statement.
- 10.7.82 The Applicant also inserted a tailpiece at Condition 7(2) of its final dDCO [REP7-004]. It explained that the tailpiece was as a result of discussions with the MMO and was to enable the MMO to agree changes to the detailed Method Statement where appropriate.
- 10.7.83 The Panel does not consider the additional flexibility provided by this tailpiece is required, given that the MMO would previously have approved the detail of the Method Statement. As such, the Panel recommends the deletion of the tailpiece from Condition 7.
- 10.7.84 Condition 7 of the rDCO therefore reads as follows:
- "7(1) The licence holder must submit a detailed method statement at least 2 months prior to the commencement of works of the first licensed activity for approval by the MMO.*
- 7(2) The authorised development must be undertaken in accordance with the approved method statement."*

SCHEDULES 10, 12 AND 13

- 10.7.85 In these schedules there were minor editing changes only, including reference to reptile mitigation areas at Schedule 13 TPO No1, 2003/W1, in response to a request from the Panel at DCO2 [EV-034].

SCHEDULE 14 - PROTECTIVE PROVISIONS

10.7.86 At DCO1, we also asked the Applicant to provide the equivalent of an 'Explanatory Memorandum' for protective provisions [EV-025, Action 52], which it did at DL4 [REP4-013, Appendix A]. This sets out the Applicant's reasoning for inclusion of Parts 1 - 4 of Schedule 14. It does not include Part 5, as this was added later in the Examination in response to SEW's concern set out in its Written Representation, that the protective provisions included at Part 1 were insufficient to protect its interests [REP2-099].

10.7.87 Schedule 14 contains five sets of protective provisions as follows:

Part 1: Protection for electricity, gas, water and sewerage undertakers.

10.7.88 Southern Gas Networks state that there are no matters that are outstanding with the Applicant confirming this in a SoCG at DL2 [REP2-030]. Whilst a final signed SoCG was not submitted to the Examination, evidence indicates that it was content with the proposed protective provisions.

10.7.89 Southern Water maintained an objection to the protective provisions, providing an alternative form of wording [REP6-029]. The Applicant considers the alternative protective provisions to be not appropriate or proportionate to an overhead line project which has less interaction with below ground assets than the project on which Southern Water has based its protective provisions. To progress this, the Applicant advised that it had issued a draft legal agreement to Southern Water and was awaiting its feedback at the close of the Examination [REP8-012].

10.7.90 We have considered the protective provisions in the dDCO and Southern Water's response to them. We agree that the alternative provisions would not be proportionate in relation to an overhead line project and can see no reason to amend the protective provisions in the dDCO.

10.7.91 No other electricity, gas, water or sewerage undertakers lodged any objections to Schedule 14. As such, Part 1 will apply to each of them.

Part 2: Protection for operators of electronic communications code networks.

10.7.92 No electronic communications code networks lodged any objections to Schedule 14 as such, it will apply to them.

Part 3: Protection for highways and traffic.

10.7.93 This was agreed by Kent County Council. At DL6, the Applicant introduced a number of amendments to the wording of Part 3 to make clear that the highway authority is Kent County Council. The Panel

considers these changes to be non-contentious and includes them in the rDCO.

Part 4: Protection for railway interests.

- 10.7.94 Network Rail Infrastructure Limited (NRIL) raised objections over the detail of Part 4. In its Written Representation, it stated that the Applicant had included provisions in the dDCO without discussing the detail with it and that it was objecting on several grounds [REP2-071]. At DL5 a Position Paper was provided to the Examination, setting out both parties' respective positions [REP5-015, Appendix C]. Network Rail also suggested a variety of amendments to the Protective Provisions [REP6-034].
- 10.7.95 Towards the end of the Examination at DCO3, NRIL confirmed that internal discussions were still ongoing with the aim of providing wording for protective provisions that would be 'more acceptable' to the Applicant [EV-075 to EV-077]. At DL7, it confirmed that no wording had been agreed internally other than those previously submitted to the Examination [REP7-045]. It attached to its DL7 submission the protective provisions sought by NRIL plus a comparison document which showed the amendments required to the protective provisions currently set out in the draft DCO submitted at DL6 [REP6-003].
- 10.7.96 At DL8, the Applicant confirmed that wording on the form of protective provisions was not agreed, summarising its position in relation to the amendments sought by NRIL in Table 4.2 [REP8-012].
- 10.7.97 The detail of NRIL's objections to Part 4 are discussed in Chapter 9 Compulsory Acquisition, where we conclude that, on the basis of the protective provisions in the rDCO, the rDCO accords with s127 of PA2008. We therefore consider that there is no reason to amend the provisions in the dDCO.

Part 5: Protection for South East Water Limited.

- 10.7.98 There are two parts to the protective provisions in favour of SEW: 'general' provisions and protective provisions for the benefit of the proposed Broad Oak reservoir. SEW objects to both parts. We discuss its objection to the proposed Broad Oak reservoir provisions in Chapter 6 of our report, our conclusion lies between the positions of the Applicant and SEW. The resulting amendments to the dDCO are set out in Table A at the end of this chapter. Our consideration of differences in respect of the 'general' provisions is below.
- 10.7.99 Although we had received assurances from both parties that progress was being made during the Examination to reach agreement on the general provisions, three matters remained outstanding at the close of the Examination as discussed below.

10.7.100 The first matter is SEW's position that the phrase "*or significantly more difficult to exercise*" should be inserted at the end of paragraph 49 (1) of the dDCO such that the paragraph would read:

"49.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed or diverted from its position under this Part of this Schedule and/or any right of SEW to retain and maintain that apparatus in that land must not be extinguished or made permanently or for any longer than 7 consecutive days incapable of being exercised or significantly more difficult to exercise until—:" [REP7-036].

10.7.101 SEW argued that it should not be in a position where it has significantly more difficulty in exercising the rights it has over its apparatus because of the proposed development; explaining that the rights are important to allow SEW access to its apparatus and to allow SEW to carry out maintenance. SEW went on to argue that it was in the public interest that these rights are not significantly made more difficult and the test the Applicant suggests is one of impossibility, which is not acceptable [REP7-029].

10.7.102 The second matter is that SEW argued the same words be added again at paragraph 54, along with the addition of the words 'the undertaker must' so that the first sentence of paragraph 54 would read:

"54. The undertaker must not in the exercise of the powers conferred by this Order permanently or for any longer than 7 consecutive days prevent, or make significantly more difficult, pedestrian or vehicular access to any apparatus or alternative apparatus, unless preventing such access is with the consent of SEW." [REP7-036]

10.7.103 SEW explained that the reasoning for the inclusion of it is the same as the reasoning for its inclusion at paragraph 49(1) [REP7-036].

10.7.104 In relation to these first two matters, the Applicant set out its reasons for not agreeing with SEW's additional wording at Appendix A of its post-hearing note to DCO3 [REP7-008]. It disagreed with the inclusion of '*or significantly more difficult to exercise*' by SEW because it explained that it had already agreed to extend this provision at SEW's request, such that it now refers to not only SEW's right to keep apparatus in the land, but also to maintain it, and to protect those rights from being made incapable of being exercised for any longer than seven consecutive days as set out in paragraph 49(1) [REP7-036]. Therefore, it does not agree that the provision should be further extended to refer to those rights being made "*significantly more difficult to exercise*" [REP7-008].

10.7.105 The Applicant went on to argue that in its view, such an extension would be 'unprecedented' and that the words are 'unclear and unspecific and could be interpreted widely to the detriment of National

Grid's ability to deliver the proposed development'. Without the ability to exercise the powers within the Order, the Applicant argued, it could not be certain of its ability to deliver the proposed development, especially where restrictions on such powers are so ambiguously worded [REP7-0008]. It confirmed that it also disagreed with the inclusion of wording of SEW's paragraph 54 (paragraph 53 in the Applicant's draft Protective Provisions) for the same reason [REP7-008].

10.7.106 SEW's third matter is the proposed inclusion of a new paragraph 53 as follows:

"53. The undertaker must pay to SEW all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule (subject to article 48 (no double recovery)) which may be occasioned to or reasonably incurred by SEW (a) by reason of the construction or maintenance of any works authorised by this Order or the failure thereof; or (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged in carrying out any works authorised by this Order; and the undertaker must indemnify and keep indemnified SEW against all claims and demands arising out of or in connection with any works authorised by this Order or any such failure, act or omission Nothing in this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of SEW or its servants, contractors or agents or any liability on SEW with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents."
[REP7-036]

10.7.107 SEW considers it reasonable for the Applicant to indemnify it for damage caused and costs incurred in relation to removal or interference with SEW's property and that the Applicant had not explained why it would not have to provide an indemnity, adding that the Applicant had confirmed that it was not opposed to an indemnity in principle [REP7-029].

10.7.108 The Applicant explains that paragraph 52 provides adequate and proportionate protection for SEW. This states that *"where any damage is caused to any of SEW's apparatus or property containing apparatus National Grid must make good such damage to the reasonable satisfaction of SEW and or make a payment of compensation to SEW to include any fines or compensation SEW incurs due to any inability to carry out its statutory functions."*

10.7.109 Therefore it does not consider the additional inclusion of an indemnity for the benefit of SEW on the face of the dDCO to be necessary or appropriate. To impose this would create *"an unduly onerous obligation to underwrite costs that might not otherwise be due and payable by National Grid under the general law of tort"* referring to the fact that as a regulated statutory undertaker with duties to operate its electricity network in an economic and efficient manner under section

9 of the Electricity Act 1989, it does not consider it can agree to indemnify SEW in the manner being suggested. The Applicant referred to the fact that SEW could pursue recovery of loss through the general law of tort and that the indemnity provision is extremely broad and far reaching, is unlimited in its nature, and does not include the usual and reasonable caveats [REP7-008].

10.7.110 In its final submission, the Applicant confirmed that the type of indemnity being sought by SEW *"contains no obligation upon SEW to mitigate its loss or to allow National Grid to adopt conduct of the defence to any third party claims for which it would be liable, all of which are standard within indemnities of this type"*. That aside and notwithstanding the Applicant's primary position, should the Secretary of State conclude otherwise, it proposed that a series of amendments are incorporated into the form of wording SEW has proposed such that it would read as follows:

"53.(1) The undertaker must indemnify and keep indemnified SEW from and against all claims and demands arising out of or in connection with the Authorised Works or any such failure, act or omission up to a maximum amount of £1 million (one million pounds) total; and the fact that any act or thing may have been done by SEW on behalf of the undertaker or in accordance with plans approved by SEW or under its supervision will not (if it was done without negligence on the part of SEW or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph."

"(2) SEW must–

(a) give to the undertaker written notice of any such claims or demands as soon as reasonably possible after SEW becomes aware of any such claims or demands;

(b) not admit liability or make any offer to settle or settle or compromise any such claim or demand without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand);

(c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed in relation to the progress of any such actions, claims and demands and paying due regard to the undertaker's reasonable representations in relation thereto.

(3) In no circumstances shall the undertaker be liable to SEW under this paragraph for any indirect or consequential loss or loss of profits." [REP8-018].

10.7.111 On the first and second matters, we are satisfied that the inclusion of the term 'significantly more difficult to exercise' would not be

necessary to avoid significant detriment to SEW's undertaking, bearing in mind the other protective provisions which would be in place in the rDCO. On the third matter, we are satisfied that the making good and compensation arrangements under the dDCO protective provisions would be sufficient to avoid significant detriment to SEW's undertaking. In coming to this view, we cannot see any circumstances sufficient to warrant the indemnity suggested by SEW or indeed the alternative indemnity suggested by the Applicant. We therefore include the Applicant's dDCO provisions in the rDCO.

SCHEDULE 15 - AMENDMENT OF LOCAL LEGISLATION

- 10.7.112 The IDB is concerned that the dis-application of Byelaws 14 and 20 of the River Stour (Kent) IDB Land Drainage Byelaws 1991 in the rDCO could result in damage to the banks of watercourses by the driving of vehicles on those banks and by other means [REP5-008]. Its position is that these Byelaws should remain and work and reinstatement should be agreed by correspondence between the parties.
- 10.7.113 The Applicant however advises that the IDB would still retain its land drainage consenting powers and that this process would prevent any unnecessary damage or regulate any necessary damage to the banks of watercourses. Furthermore, vehicles would need to be driven on the banks of watercourses to construct the proposed development, which could result in damage to be made good. The absolute prohibitions in Byelaws 14 and 20 in relation to damage would therefore conflict with the rDCO in this regard, and there is no IDB consent mechanism in these particular bylaws.
- 10.7.114 We are satisfied that any driving of vehicles on the banks of watercourse under the powers sought in the rDCO would be that necessary for the authorised development and that it would be within any land drainage consent. We are therefore of the view that the disapplication of IDB Byelaws 14 and 20 are appropriate and necessary to allow the works to progress.
- 10.7.115 The IDB is also concerned that the dis-application of Byelaw 17 would remove its powers to consent crossings of watercourses. It is however also concerned in terms of resourcing individual consent application, and is willing to confirm its general agreement to crossings.
- 10.7.116 The Applicant does not believe that it is appropriate to have to seek the consent of the IDB for every instance where the overhead electric line crosses at height over watercourses and so it is considered appropriate and justified to dis-apply this bylaw.
- 10.7.117 We consider that, in view of the consultation that has taken place, the retention of land drainage consent powers, and the limits of works within the rDCO, that it would be appropriate to dis-apply IDB Byelaw 17. We therefore do not consider that any amendments to the dDCO are necessary in this regard.

10.8 OTHER LEGAL AGREEMENTS

- 10.8.1 During the course of the Examination the Councils and the Applicant reached agreement over the terms of a s106 agreement. This agreement, dated 5 December 2016 was engrossed before the end of the Examination and submitted at DL9 [REP9-001, Appendix 2].
- 10.8.2 The s106 agreement has six schedules which contain covenants which are stated to be development consent obligations for the purposes of s106 of the Town and Country Planning Act 1990. These schedules cover: 1. Sites, 2. Landscape and Habitat Enhancement Scheme (LHES), 3. Service Level Agreement, 4. Councils' Obligations, 5. Public Rights of Way and 6. Historic Environment.
- 10.8.3 The ExA has had regard to the covenants set out in the s106 agreement, in the light of EN-1³²⁶. We have explained in Chapter 5 of our report those development consent obligations which we consider to be compliant with that NPS and that we have taken into account in reaching our conclusions and making our recommendation.
- 10.8.4 We consider that, for the most part, those tests are fully met and we have taken the obligations into account and placed weight upon them. Whilst the LHES is welcomed and delivers landscape, biodiversity and heritage enhancement³²⁷, the Applicant has argued it is enhancement not mitigation and the ExA therefore considers that whilst it meets most of the tests, it is not necessary to make the proposed development acceptable in planning terms. We have placed some weight upon it for enhancement, but not for mitigation.

10.9 OTHER CONSENTS

- 10.9.1 The Applicant sets out the other consents that it intends to apply for in its document 'Other Consents and Licences' submitted initially as an application document and subsequently updated following FWQ and the Relevant Representation from NE [REP2-012].
- 10.9.2 Consents to be pursued separately include Protected Species Licences (and the Panel notes that the Applicant has submitted Letters of No Impediment in respect of certain protected species, which have been received from NE); registration(s) by the EA under Regulation 21 of the Hazardous Waste (England and Wales) Regulations 2005; Environmental Permits, Flood Risk activity permits; consent(s) from the relevant drainage board and KCC to alter ordinary watercourses pursuant to section 23 of the Land Drainage Act 1991; s61 consents under the Control of Pollution Act 1974 and consent from NE to work on Sites of Special Scientific Interest under Regulation 28E of the Wildlife and Countryside Act 1981 [REP2-012].

³²⁶ EN-1, para 4.1.8

³²⁷ EN-1, para 5.3.4

- 10.9.3 In addition, the Applicant identifies two consents which it considers may be required; these being licences from NE to affect badgers pursuant to section 10 of the Protection of Badgers Act 1992; and consent(s) from the relevant sewerage undertaker to discharge waste water to a sewer pursuant to section 118 of the Water Industry Act 1991 [REP2-012].
- 10.9.4 The Panel has no reason to disagree with the Applicant's approach to securing other consents.

10.10 CONCLUSION

- 10.10.1 The ExA considers the recommended Order, as set out in Appendix E of our report, to be acceptable having regard to all matters forming part of the application, the development sought and put before us at the Examination and the provision of the s106 agreement mentioned earlier in this section.

TABLE A - PANEL'S PROPOSED AMENDMENTS TO THE RECOMMENDED DEVELOPMENT CONSENT ORDER

*Amendments with an asterisk are minor typographical errors only and are not discussed in detail in Chapter 10 of our report.

Part of the recommended Order that differs from the Applicant's final submission DCO [REP7-003]	Amendment made by the Panel	Reference to reasoning for amendment
Article 3	<p>Conflate 3(2)(a) and (b) to read as follows:</p> <p>(2) National Grid may install and keep installed the above-ground electric lines included in the authorised development except those above-ground electric lines included in the UK Power Networks works.</p>	As set out in Chapter 10.
Article 21	<p>The addition of:</p> <p>21(7) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.</p>	As set out in Chapter 10.
Article 22	<p>The replacement of Article 22 with:</p> <p>22(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—</p> <p>(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;</p> <p>(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or</p> <p>(c) belonging to a government department or held in trust for Her Majesty</p>	As set out in Chapter 10.

Part of the recommended Order that differs from the Applicant's final submission DCO [REP7-003]	Amendment made by the Panel	Reference to reasoning for amendment
	<p>for the purposes of a government department without the consent in writing of that government department.</p> <p>(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.</p> <p>(3) A consent under paragraph (1)—</p> <p>(a) may be given unconditionally or subject to terms and conditions;</p> <p>(b) is deemed to have been given in writing where it is sent electronically.</p>	
Article 26*	<p>Amendment of a typographical error to read as follows:</p> <p>26(1) ... the subsoil of, or the air-space of, the land referred to in article 21 (compulsory acquisition of rights)....</p>	As set out in Chapter 10 and [REP9-001].
Schedule 1	<p>Amendments to be made as follows:</p> <p>(l) such other works, including working sites storage areas, and works of demolition, as may be necessary for the purposes of or in connection with the construction of the authorised development and which do not give rise to any different environmental effects from those assessed in the Environmental Statement; and</p> <p>(m) such other works as may be necessary for the purposes of or in connection with the maintenance of the authorised development and which do not give rise to any different environmental effects from those assessed in the Environmental Statement</p>	As set out in Chapter 10.
Schedule 2 Part 3	<p>The replacement of:</p> <p>drawing PDD-21497-2-OHL-0403 Version B with 21497-2-OHL-0434 Version B</p>	As set out in Chapter 6 and summarised in Chapter 10.

Part of the recommended Order that differs from the Applicant's final submission DCO [REP7-003]	Amendment made by the Panel	Reference to reasoning for amendment
Schedule 2 Part 6*	Amendment of a typographical error. The changes are to update the revision lettering for: drawings PDD-21497-2-OHL-1092 and PDD-21497-2-OHL-1094 from B to A	As set out in Chapter 10 and [REP8-001].
Schedule 3 Requirement 1(3)	Amendments to be made as follows: 3) Where an approval is required under the terms of any Requirement or a document referred to in a Requirement, or any Requirement specifies "unless otherwise approved" or "unless otherwise agreed" by the highway authority or the relevant planning authority such approval or agreement may only be given if the changes are minor or immaterial and where it has been demonstrated to the satisfaction of the highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.	As set out in Chapter 10.
Requirement 5	Deletion of: 'where required in accordance with its statutory duty' in R5(4)	As set out in Chapter 10.
Requirement 5	Deletion of: tailpieces at R5(1); R5(3) and R5(4)	As set out in Chapter 10.
Requirement 7	Deletion of: tailpieces at R7(1), R7(2) and R7(4) construction hours	As set out in Chapter 10.
Requirement 10*	Amendment of a typographical error. The reference to 'Requirement	As set out in Chapter 10.

Part of the recommended Order that differs from the Applicant's final submission DCO [REP7-003]	Amendment made by the Panel	Reference to reasoning for amendment
	6(1)(h)' in the second line of R10(1) is incorrect and should be 'Requirement 6(1)(g)'.	
Requirement 18	Deletion of the words: 'at the earliest opportunity and'	As set out in Chapter 10.
Requirement 20	Deletion of the words: 'at the earliest opportunity and' and removal of tailpiece at R20(4)	As set out in Chapter 10.
Schedule 9 Condition 7	Insertion of time limit and deletion of tailpiece as below: 7(1) The licence holder must submit a detailed method statement at least 2 months prior to the commencement of works of the first licensed activity for approval by the MMO. 7(2) The authorised development must be undertaken in accordance with the approved method statement.	As set out in Chapter 10.
Schedule 11 Part 2*	Amendment of a typographical error. In preparing the draft the Applicant inadvertently deleted the number '2' from plot number '482' in the fifteenth row of the table so that the plot number now refers to '48'. This is an error as the plots adjacent to this plot are numbered '481' and '483'.	As set out in Chapter 10 and [REP8-001].
Schedule 14 Part 5	Provision 54 - After 'drawings' the deletion of 'and in more detail on plan []'.	As set out in Chapter 6 and referred to in Chapter 10.
Schedule 14 Part 5	Provision 56 - After 'safe' the deletion of 'and efficient', and after 'development' the deletion of 'or for the protection of the undertaker's statutory undertaking, including for reasons of health and safety'.	As set out in Chapter 6 and referred to in Chapter 10.

Part of the recommended Order that differs from the Applicant's final submission DCO [REP7-003]	Amendment made by the Panel	Reference to reasoning for amendment
Schedule 14 Part 5	Provision 58 - After 'drawings' the deletion of 'and in more detail on plan []'.	As set out in Chapter 6 and referred to in Chapter 10.
Schedule 14 Part 5	Provision 59 - After 'deviation,' the deletion of 'National Grid shall use all reasonable endeavours to ensure that', and after 'drawings' the replacement of 'and in more detail on plan []' with 'unless otherwise agreed in writing with SEW'.	As set out in Chapter 6 and referred to in Chapter 10.
Schedule 14 Part 5	Provision 60 - After 'at' the replacement of '[its own cost] [the cost of SEW]' with 'its own cost'.	As set out in Chapter 6 and referred to in Chapter 10.

11 CONCLUSIONS

11.1.1 In relation to s104 of PA2008, the Examining Authority (ExA) further concludes in summary:

- (a) that making the recommended Order would be in accordance with the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Electricity Networks Infrastructure (EN-5), the relevant development plans and other relevant policy, all of which has been taken into account in this report;
- (b) that the ExA has had regard to the Joint Councils' Local Impact Report from Kent County Council, Canterbury City Council, Thanet District Council and Dover District Council in making its recommendation;
- (c) that whilst the Secretary of State is the competent authority under the Habitats Regulations the ExA finds that in its view, the proposal would not adversely affect European sites, species or habitats and the ExA has taken this into account in reaching its recommendation;
- (d) that in regard to all other matters and representations received, but subject to the amendments to the design drawings set out in Chapter 6, the ExA found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- (e) that should the Secretary of State agree with our suggestion in terms of a Land Drainage Consultant; he requests the Applicant to incorporate the role in the CEMP, as set out Section 5.4;
- (f) that there is no adverse impact of the proposed development that would outweigh its benefits; and
- (g) that there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statements.

11.1.2 In relation to the application for compulsory acquisition and related powers within the recommended Order, the ExA in summary concludes:

- (a) that the compulsory acquisition (CA) powers included in the rDCO be granted, subject to the matters as set out in Chapter 9 in relation to Crown land and funding;
- (b) that the temporary possession powers included in the recommended Development Consent Order (rDCO) be granted, subject to the matters as set out in Chapter 9 in relation to Crown land;
- (c) that the powers authorising the CA of Statutory Undertakers' land and rights over land included in the rDCO be granted;
- (d) that the powers authorising the extinguishment of rights, and removal of apparatus, of Statutory Undertakers included in the rDCO be granted;
- (e) that the powers authorising the CA of rights over open space included in the rDCO be granted; and

(f) that the powers included in the rDCO to apply, modify or exclude a statutory provision be granted.

11.1.3 In relation to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 the ExA recommends that the views of the Applicant are sought regarding the necessity to make any amendments to Article 25, Article 21, and paragraphs 2(3) and 5 of Schedule 10 of the rDCO.

RECOMMENDATION

11.1.4 For all of the above reasons and in the light of the ExA's findings and conclusions on important and relevant matters set out in this report, the ExA under the PA2008 (as amended) recommends the Secretary of State for Business, Environment and Industrial Strategy makes the National Grid (Richborough Connection Project) Development Consent Order in the form recommended at Appendix E.

APPENDICES

See separate documents