

Gate Burton Energy Park

Preliminary Environmental Information Report

Volume 3, Appendix 9-C: Legislation and Policy

June 2022

Gate Burton Energy Park Limited

Quality information

<u>Prepared by</u>	<u>Checked by</u>	<u>Verified by</u>	<u>Approved by</u>
RS TJ	RW	NT	WB

Prepared for:

Gate Burton Energy Park Limited

Prepared by:

AECOM Limited

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1. Introduction

1.1 Purpose of this appendix

- 1.1.1 This PEI Report appendix identifies and describes the legislation, policy and supporting guidance considered relevant to the assessment of the likely significant effects of the Scheme on the Water Environment.
- 1.1.2 Legislation and policy are considered at national and local levels.
- 1.1.3 This PEI Report appendix does not assess the Scheme against legislation and policy; instead the purpose of considering legislation and policy in the EIA is twofold:
- a. to identify legislation and policy that could influence the determination of important water environment features (and therefore the significance of effects) and any requirements for mitigation; and
 - b. to identify legislation and policy that could influence the methodology of the EIA and signposting where this dealt with in the PEI Report. For example, a policy may require the assessment of an impact or the use of a specific methodology.
- 1.1.4 The following sections identify and describe the legislation, policy and supporting guidance considered specifically relevant to the water environment assessment (the assessment) as presented in **PEI Report Volume 1, Chapter 9: Water Environment**.

1.2 Legislation

- 1.2.1 The main legislation relevant to the Scheme includes the following (please note that details of European Directives are not included, but rather the national legislation that transposes them):
- Environment Act 2021 (Ref. 9-1);
 - Water Act 2014 (Ref. 9-2);
 - Flood and Water Management Act 2010 (Ref 9-3);
 - Environmental Protection Act 1990 (Ref 9-4);
 - Land Drainage Act 1991 (as amended) (Ref 9-5);
 - Water Resources Act 1991 (as amended) (Ref 9-6);
 - Salmon and Freshwater Fisheries Act 1975 (as amended) (Ref 9-7);
 - Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (Ref 9-8);
 - The Environmental Damage (Prevention and Remediation) Regulations 2017 (as amended) (Ref 9-9);

- Environmental Permitting (England and Wales) Regulations 2016 (as amended 2018) (Ref 9-10);
- Eels (England and Wales) Regulations 2009 (Ref 9-12);
- Control of Pollution (Oil Storage) (England) Regulations 2001 (Ref 9-13).
- The Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (Ref 9-14);
- The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (Ref 9-15);
- The Control of Substances Hazardous to Health (Amendment) Regulations 2004 Ref 9-16);
- The Anti-Pollution Works Regulations 1999 (Ref 9-17); and
- The Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015 (Ref 9-18).

1.3 National Planning Policy

National Policy Statements

1.3.1 The following planning policies from relevant National Policy Statements (NPS) have been taken into account as part of identifying the assessment methodology, receptor selection/sensitivity, potential significant environmental effects, and mitigation:

- Overarching National Policy Statement for Energy (NPS EN-1) (Ref 9-19), with particular reference to section 5.15 (water quality and resources) paragraph 5.15.3, which sets out what an Environmental Statement (ES) should describe. This includes: the existing water quality, the existing water resources, the existing physical characteristics of the water environment and any impacts of the Scheme on water bodies or protected areas under the Water Framework Directive (WFD) and source protection zones (SPZs) around potable groundwater abstractions.
- Additionally, paragraph 4.8.6 states that applicants for new energy infrastructure must take into account the potential impacts of climate change, including the most up to date UK Climate Projections (as set out by the Met Office), and adopt appropriate mitigation or adaptation measures for the lifetime of the proposed infrastructure.
- Paragraphs 5.15.4–5.15.7 outline the decision-making process with regards to water quality and resources. Impacts on the water environment will need to be given more weight where a project would have an adverse effect on the achievement of environmental objectives established under the WFD. Within paragraphs 5.15.8-5.15.10 it is stated that whether mitigation measures over and above those included within an application are needed should be considered by the Secretary of State.
- In addition, section 5.7 relates to flood risk. It sets out, for instance the minimum requirements for flood risk assessments (e.g. they should be

proportionate to the risk and appropriate to the scale, nature and location of the project (paragraph 5.7.5)). As part of the decision making, the Secretary of State should be satisfied on a number of points, to include that the application is supported by an appropriate flood risk assessment.

- National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) (Ref 9-20). Although this technology specific NPS does not make specific reference to solar developments it is considered an important and relevant policy document for the assessment in this chapter of the PEI Report. In the context of renewable energy infrastructure, it highlights the importance of considering potential impacts on water quality, water resources, and flood risk, and taking into account climate change.
- Paragraph 2.4.1 of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5), (Ref 9-21) sets out that applications should demonstrate the extent of vulnerability of the proposed development and as appropriate how resilient it would be to flooding. It refers to section 4.8 of EN-1 which advises that the resilience of a project to climate change should be assessed in the ES and that future increased risk of flooding would be covered in a Flood Risk Assessment (FRA). An FRA is included as **PEI Report Volume 3: Appendix 9-B**.

Draft National Policy Statements

- 1.3.2 Revised Draft NPSs were released by the UK Government for consultation in September 2021.
- 1.3.3 Certain relevant sections of text in NPS EN-1 have been revised in the draft that has been published. This includes some of the text in section 15.5 (water quality and resources) which is section 15.16 in the revised draft. For instance, paragraph 5.16.3 states that where possible, applicants are encouraged to manage surface water during construction by treating surface water runoff from exposed topsoil prior to discharging. Similarly, there are some changes in the flood risk section (section 5.7 in the current policy at 5.8 in the revised draft), to include additional text on the 'minimum requirements' for flood risk assessments.
- 1.3.4 Notably, the revised draft NPS for Renewable Energy Infrastructure (Draft NPS EN-3, Ref 9-22) includes a specific section on solar developments. With regard to the Water Environment, the following is provided for (see paragraph 2.50.7):
 - An FRA may accompany an applicant's assessment and this will need to consider the impact of drainage;
 - Where access tracks are needed, permeable tracks should be used, and localised Sustainable Drainage Systems (SuDS) should be used to control runoff;
 - Given the temporary nature of solar farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses; and

- Culverting existing watercourses/drainage ditches should be avoided. When this is unavoidable, it should be demonstrated that no reasonable alternatives exist and where necessary it will only be for the construction period.

1.3.5 In addition, the same draft NPS also provides, in terms of decision-making, that water management is a critical component of site design for ground mount solar plants.

National Planning Policy Framework

1.3.6 The National Planning Policy Framework (NPPF, 2021) (Ref 9-23) has three overarching objectives to contribute to the achievement of sustainable development, one of which is the environmental objective. This objective is to *“to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy”* (Paragraph 8c). In addition, the NPPF contains a number of statements which are relevant to water quality. These include:

- *“Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for: ... (d) conservation and enhancement of the natural, built and historic environment...”*. This includes landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation (paragraph 20d);
- *“Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures [in line with the objectives and provisions of the Climate Change Act 2008]. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts...”* (paragraph 153); and
- *“Planning policies and decisions should contribute to and enhance the natural and local environment by: ... (e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as water quality, taking into account relevant information such as river basin management plans ...”* (paragraph 174e).

1.3.7 The requirements of the NPPF have been taken into account by the assessment, with particular regard given to potential impacts in relation to flood risk and water quality.

National Planning Practice Guidance

1.3.8 National Planning Practice Guidance (NPPG) (Ref 9-24) is a web-based resource that, with reference to the Flood Risk and Coastal Change guidance

(published 2014) (Ref 9-25), advises on how to take account of and address the risks associated with flooding and coastal change in the planning process.

- 1.3.9 It outlines a number of main steps to be followed which are designed to ensure that if there are better sites in terms of flood risk, or if a proposed development cannot be made safe, it should not be permitted. These steps include: assess flood risk; avoid flood risk; and manage and mitigate flood risk. The guidance states that developers and applicants need to consider flood risk to and from the development site and it is likely to be in their own best interests to do this as early as possible. In addition, the guidance provides detail on the application of the Sequential Test and the Exception Test, which is considered in the FRA (**PEI Report Volume 3: Appendix 9-B**).

A Green Future: Our 25 Year Plan to Improve the Environment

- 1.3.10 In 2018 Defra published 'A Green Future: Our 25 Year Plan to Improve the Environment' (Ref 9-26) setting out the UK Government's goals for improving the environment within a generation and leaving it in a better state than we found it. The plan covers the provision of clean air and water; protection and enhancement of habitats, wildlife and biosecurity; reducing the risk from environmental hazards and mitigating and adapting to climate change; using resources more sustainably and efficiently, minimising waste and managing exposure to chemicals; and enhancing beauty, heritage and engagement with the natural environment.
- 1.3.11 With regards to the water environment, the Plan includes specific goals to reduce the environmental impact of water abstraction, meet the objectives of River Basin Management Plans under the Water Framework Directive, reduce leakage from water mains, improve the quality of bathing waters, restore protected freshwater sites to a favourable condition, and do more to protect communities and businesses from the impact of flooding, coastal erosion and drought. The foundation of the Plan incorporates a natural capital approach with the aspiring goal that there should always be a net gain in biodiversity from new development.

Future Water, The Government's Water Strategy for England

- 1.3.12 The Government's Future Water strategy (Ref 9-27), published in June 2011, sets out the Government's long-term vision for water and the framework for water management in England. It aims to permit the supply of secured water supplies whilst ensuring an improved and protected water environment. Future Water brings together the issues of water demand, water supply, water quality in the natural environment, surface water drainage and river/coastal flooding into a single coherent long-term strategy, in the context of the need to reduce greenhouse gas emissions.
- 1.3.13 The strategy also considers the issue of charging for water. The water environment and water quality have great economic, biodiversity, amenity and recreational value, playing an important role in many aspects of modern day society, and thus the functions provided must be sustainably managed to

ensure they remain available to future generations without compromising environmental quality.

Sustainable Drainage Systems Guidance

- 1.3.14 Planning policy encourages developers to include Sustainable Drainage Systems (SuDS) in their proposals where practicable.
- 1.3.15 Defra published guidance on the use, design and construction of SuDS in Non-Statutory Technical Standards for SuDS (Ref 9-28).
- 1.3.16 Industry good practice guidance on the planning for and design of SuDS is also provided by CIRIA C753 The SuDS Manual (Ref 9-29) and Design Manual for Roads and Bridges (DMRB) CD532 Vegetated Drainage Systems for Highways Runoff (Ref 9-30).
- 1.3.17 Consideration is also given to The Building Regulations 2010 Approved Document H Drainage and Waste Disposal (Ref 9-31) and Water UK: Sewerage Sector Guidance (Ref 9-32).

1.4 Regional Planning Policy

- 1.4.1 At a regional level, water management is coordinated through 10 River Basin Management Plans (RBMPs). RBMPs are prepared by the Environment Agency for six-year cycles and set out how organisations, stakeholders and communities will work together to improve the water environment. The most recent plans were published in 2015 (the second cycle) and will remain in place until after 2021. The study area falls under the Witham Management Catchment within the Anglian RBMP (Ref 9-33) and the Lower Trent and Erewash Management Catchment within the Humber RBMP (Ref 9-34).

1.5 Local Planning Policy

- 1.5.1 The Scheme study area spans two county districts: Lincolnshire and Nottinghamshire. The following local planning policy will also be taken into consideration:

Central Lincolnshire Local Plan (2017)

- 1.5.2 Central Lincolnshire Local Plan 2012 - 2036 (2017) (Ref. 9-35) includes several relevant policies, particularly Policy LP14 (Managing Water Resources and Flood Risk), LP18 (Climate Change and Low Carbon Living), LP19 (Renewable Energy Proposals) and LP20 (Green Infrastructure Network).

Bassetlaw District Council Core Strategy (2011)

- 1.5.3 Bassetlaw District Council Core Strategy (Ref. 9-36) seeks to ensure that all new development reduce or mitigate flood risk; realise opportunities to utilise renewable and low carbon energy sources and/or infrastructure, alongside sustainable design and construction and make use of SuDS. Relevant development management policies include DM10 (Renewable and Low Carbon Energy) and DM12 (Flood Risk, Sewerage and Drainage).

Draft Bassetlaw Local Plan 2020 – 2037 (2021)

- 1.5.4 The Draft Bassetlaw Local Plan 2020 – 2037 (2021) (Ref. 9-37) is likely to be adopted in 2022, and has numerous relevant policies including Policy ST51 (Renewable Energy Generation), Policy ST52 (Flood Risk and Drainage) and Policy ST53 (Protecting Water Quality and Management).

Lincolnshire County Council SuDS Guidance (2018)

- 1.5.5 In 2018, Lincolnshire County Council produced the ‘Sustainable Drainage Design and Evaluation Guide’ (Ref. 9-38). This guide links the design of SuDS with the evaluation requirements of planning to facilitate consultation in order to achieve the best possible SuDS design. It is primarily intended for use by developers, designers and consultants who are seeking guidance on the Lead Local Flood Authority (LLFA) standards for the design of sustainable surface water drainage in Lincolnshire.
- 1.5.6 All major developments will be required to incorporate water management measures to reduce surface water runoff and ensure that it does not increase flood risk elsewhere by considering all sources of flood risk both to and from a proposed scheme. The principal method to do so should be the use of SuDS. Surface water runoff should be managed to ensure that there is no increase in surface water flow rate runoff.

1.6 References

- Ref 9-1. Environment Act 2021.
- Ref 9-2. Water Act 2014.
- Ref 9-3. Flood and Water Management Act 2010.
- Ref 9-4. Environmental Protection Act 1990.
- Ref 9-5. Land Drainage Act 1991.
- Ref 9-6. Water Resources Act 1991.
- Ref 9-7. Salmon and Freshwater Fisheries Act 1975.
- Ref 9-8. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- Ref 9-9. The Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017.
- Ref 9-10. The Environmental Permitting (England and Wales) Regulations 2016
- Ref 9-11. Groundwater (England and Wales) Regulations 2009.
- Ref 9-12. Eels (England and Wales) Regulations 2009.
- Ref 9-13. Control of Pollution (Oil Storage) (England) Regulations 2001.
- Ref 9-14. The Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009.
- Ref 9-15. The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019..
- Ref 9-16. The Control of Substances Hazardous to Health (Amendment) Regulations 2004.
- Ref 9-17. The Anti-Pollution Works Regulations 1999.
- Ref 9-18. The Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015.
- Ref 9-19. Department of Energy and Climate Change (DECC), Overarching National Policy Statement for Energy (NPS EN-1) (2011)
- Ref 9-20. DECC, National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) (2011)
- Ref 9-21. DECC, National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (2011)
- Ref 9-22. DECC, Draft National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) (2021)
- Ref 9-23. Department of Communities and Local Government (DCLG) (2021) National Planning Policy Framework (NPPF).
- Ref 9-24. Department for Levelling Up, Housing and Communities (DLUHC) and Ministry of Housing, Communities and Local Government (2014) National Planning Practice Guidance (NPPG).
- Ref 9-25. DLUHC and Ministry of Housing, Communities and Local Government (2014) National Planning Practice Guidance: Flood Risk and Coastal Change.
- Ref 9-26. DEFRA. (2018). A Green Future: Our 25 Year Plan to Improve the Environment.
- Ref 9-27. DEFRA (2011). Future Water: The Government's water strategy for England
- Ref 9-28. DEFRA (2015). The Non-statutory technical standards for Sustainable Drainage Systems.
- Ref 9-29. CIRIA (2016) Report C753 The SuDS Manual 2nd Edition.
- Ref 9-30. National Highways (2020) DMRB CD532 Vegetated Drainage Systems for Highways Runoff.
- Ref 9-31. Ministry of Housing, Communities and Local Government (2010). The Building Regulations 2010 Approved Document Part H: Drainage and Waste Disposal.
- Ref 9-32. Water UK (2019) Sewerage Sector Guidance.
- Ref 9-33. Environment Agency (2015) Anglian River Basin Management Plan.
- Ref 9-34. Environment Agency (2015) Humber River Basin Management Plan.
- Ref 9-35. Central Lincolnshire Local Plan (2012-2036) .
- Ref 9-36. Bassetlaw District Council (2011). Core Strategy and Development Management Policies DPD.
- Ref 9-37. The Draft Bassetlaw Local Plan 2020 – 2037 (2021)
- Ref 9-38. Lincolnshire County Council (2018) Sustainable Drainage Design and Evaluation Guide.