



Little Crow

Solar Park

Little Crow Solar Park, Scunthorpe

EXPLANATORY MEMORANDUM

DEADLINE 2

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1. **GLOSSARY**

"1990 Act" The Town and Country Planning Act 1990 (as amended).

"2008 Act" The Planning Act 2008 (as amended) which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.

"APFP Regulations" The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) which set out detailed procedures that must be followed for submitting and publicising applications for NSIPs.

"Applicant" INRG Solar (Little Crow) Limited.

"Application" The Application for a Development Consent Order made to the Secretary of State under Section 37 of the 2008 Act in respect of the Authorised Development, required pursuant to Section 31 of the 2008 Act because the Authorised Development comprises an NSIP under Section 14(1)(a) and Section 15 of the 2008 Act by virtue of it comprising a generating station in England or Wales of 50 Megawatts electrical capacity or more.

"Application Documents" The documents submitted as part of the Application process indexed in the Application guide (document reference 1.2 LC APP) including but not

limited to the application form, a draft development consent order, the environmental statement, the Outline CEMPs and associated plans which set out the operation and design parameters for the Authorised Development.

"Associated Development"

Defined under s.115(2) of the 2008 Act as development which is associated with the principal development and that has a direct relationship with it. Associated Development should either support the construction or operation of the principal development, or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.

"Authorised Development"

The development to which the Application relates and which requires a DCO, as described in Schedule 1 to the Order, comprising the NSIP and Associated Development.

"Book of Reference"

The Book of Reference (document reference 3.3 LC DCO) accompanying the Application which is a reference document providing details of all land ownership interests within the Order Limits with reference to the book of reference plans.

"Consultation Report"

The Consultation Report (document reference 4.1 & 4.2 LC REP), accompanying the Application and explains the consultation undertaken by

the Applicant in accordance with the 2008 Act.

"DAS"	Design and Access Statement (document reference 9.2 LC OTH) accompanying the Application which explains the design and access issues faced by the Authorised Development.
"DCO"	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise an NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development.
"EIA"	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations.
"EIA Regulations"	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) setting out how the EIA of NSIPs must be carried out and the procedures that must be followed.
"ES"	The Environmental Statement (document reference 6. LC ES CH) accompanying the Application documenting the findings of the EIA.
"Explanatory Memorandum"	This document – it explains the intended purpose and effect of a DCO and the authorisations and powers that it seeks.

"Land Plan including Order Limits"	The plan (document reference 2.1 LC DRW) showing the land to be used for the Authorised Development.
"LEMP"	Landscape and ecological management plan to be prepared in accordance with requirement 10 (Part 1, Schedule 2 of the draft DCO)
"Local Planning Authority"	North Lincolnshire Council.
"MWP"	Megawatts peak.
"NSIP"	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under the 2008 Act.
"Order"	The Little Crow Solar Park Order, being the DCO that would be made by the Secretary of State authorising the Authorised Development, a draft of which accompanies the Application (document reference 3.1 LC DCO).
"Order Land"	The land within the Order Limits on which the Authorised Development will be built as shown on the Land Plan including Order Limits.
"Order Limits"	The limits of the land to which the Application for the DCO relates, within which the Authorised Development must be carried out and which is required for its construction and operation, as shown on the Land Plan including Order Limits.
"PINS"	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of

applications for NSIPs on behalf of the Secretary of State.

"Planning Statement"

The Planning Statement (document reference 9.1 LC OTH) accompanying the Application which explains the national and local policy support for the Authorised Development.

"Statement of Need"

The Statement of Need (document reference 3.4 LC DCO), accompanying the Application which explains the national need for the Authorised Development.

"Secretary of State"

The Secretary of State for Business, Energy and Industrial Strategy who will determine the Application.

"Undertaker"

The Applicant or such other person who takes the benefit of the DCO following the procedure within Article 5 of the Order.

"Works Plan"

The plan (document reference 2.8 LC DRW) which shows the Works referred to in Schedule 1 of the Order.

The definitions included in Article 2 of the Order apply to the terminology used in this document. Where a specific term is not defined in this glossary the reader should refer to this Article.

2. **INTRODUCTION**

Overview

- 2.1 This Explanatory Memorandum has been prepared on behalf of the Applicant. It forms part of the Application for a DCO that has been submitted to the Secretary of State under section 37 of the 2008 Act.
- 2.2 The Applicant is seeking development consent for the Authorised Development, which in summary comprises a solar generating station

and all infrastructure required to transmit the power generated to the substation to be constructed onsite and from there on to the local electricity network. It will be located near Scunthorpe in Lincolnshire. The site sits on land to the east of the British Steel Works in Scunthorpe and 2.5km northwest of the village of Broughton.

- 2.3 A DCO is required for the Authorised Development as it falls within the definition and thresholds for a NSIP under sections 14(1)(a) and 15(2) of the 2008 Act, as at the time of application it consists of a generating station, being a ground mounted solar photovoltaic generating station with a capacity of over 50MWP.
- 2.4 The DCO, if made by the Secretary of State, would be known as The Little Crow Solar Park Order.
- 2.5 This Explanatory Memorandum should be read in conjunction with the suite of documents that accompanied the Application, in particular the ES, the Works Plan, the Land Plan including Order Limits, the Consultation Report, the Planning Statement and the Statement of Need.

INRG Solar (Little Crow) Limited

- 2.6 The Applicant is a limited company registered at Companies House under company number 11136483 and whose registered office is at 93 Leigh Road, Eastleigh, Hants, England, SO50 9DQ.
- 2.7 The Applicant is a wholly owned subsidiary of INRG Solar Limited. Founded in 2009, INRG Solar Limited has established itself as one of the largest developers of solar parks in the UK, responsible for the development of 30 solar parks with a capacity of almost 300 Megawatts (MW) across the country and providing enough clean electricity to power over 90,000 UK homes.
- 2.8 More information on the Applicant, its ownership and corporate structure can be found on its website at www.littlecrowsolar.co.uk.
- 2.9 INRG Solar Limited has accepted a grid offer from Northern Powergrid (Yorkshire) plc ("NPG") to connect to its network and secured 99.9MW of export capacity. This is the maximum currently available on the NPG network and it also takes the National Grid Electricity Transmission electricity network close to its network capability in this area.

AUTHORISED DEVELOPMENT

NSIP

- 2.10 A detailed description of the Authorised Development can be found in Chapter 4 of the ES. It contains a generating station, battery energy storage system, substation and other works which are summarised below:
- (i) **Work No. 1** (a)–(l): consists of an NSIP, being the arrays of ground-mounted solar panels comprising a generating station with a gross electrical output of over 50 MWP with solar panels fitted to mounting structures secured by posts pushed into the ground, internal access tracks, inverters, transformers, cable trenches and cable circuits, switchgear and ancillary equipment, earthing and communication circuits, CCTV and mountings and internal security fencing with gates.

Associated Development

- 2.11 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos. 2A & B – 7 of the Authorised Development as set out below:
- (i) **Work No. 2** (a) –(l) consists of a battery energy storage system with containerised battery units, inverters, client switch room containers housing the switch gear, transformers, cable trenches, cable circuits, communication circuits, vehicle parking, earthing circuits, CCTV and mountings, internal access tracks and internal security fencing with gates
 - (ii) The battery energy storage system may take place is one of two locations shown on the Works Plan as Work No. 2A and Work No. 2B. Alternative locations are proposed to allow the Applicant to take advantage of any technological advances in the development of solar panels arising before construction begins. If relevant advances are made it may mean that fewer solar panels are required to produce the same output and if this is the case the Applicant may wish to reduce the number of solar panels comprising Work No. 1 and to construct Work No. 2B. The alternative locations bear two works numbers on the Works Plan (see document reference 2.8 LC DRW), to show that if Work No.

2A is constructed the area allocated for Work No. 2B may be used for Work No. 1 (i.e. solar panels). Conversely, if the battery energy storage system is located on the site of Work No. 2B then the area allocated for Work No. 2A will form part of the Ecological Corridor (Work No. 3).

- (iii) Either Work No. 2A or Work No. 2B as shown on the Works Plan will house the battery energy storage system
- (iv) The Government has recently acknowledged that electricity storage is a key technology in the transition to a smarter and more flexible energy system and that it will play an important role in helping to reduce emissions to net-zero by 2050. To support this the Government has just introduced legislation which removes onshore electricity storage from the NSIP regime. This means that from 2 December 2020 the primary consenting route for the battery energy storage system proposed by the Applicant falls under the 1990 Act and can now be Associated Development.
- (v) **Work No. 3** (a)-(m): formation of ecological corridors, comprising planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP, internal access tracks, fencing of the archaeological exclusion zone, swale buffer, temporary diversion of public footpath, underground connection to the electricity network, cable trenches, cable circuits, hedge buffer, ancient woodland buffer, pond buffer, CCTV and mountings and bunds, embankments and swales.
- (vi) **Work No. 4** (a)-(p): construction of substation building and compound comprising customer switch room, control room building with welfare unit and WC, car parking, gantry, security fencing with gates, circuit breaker, earthing circuits, creation of separate access track for the District Network Operator, cable trenches and cable circuits, cess pit, floodlight columns, pad mounted transformer, sealing end structures, high level 132kV busbars and low level disconnectors.

- (vii) **Work No. 5** (a)-(d): upgrade to main access track comprising laying out and surfacing of passing bays and access track, vegetation removal, planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP, and drainage channels.
- (viii) **Work No. 6** (a)-(i): creation of perimeter development buffer, comprising security fencing, boundary treatment, and other means of enclosure, bunds, embankments and swales, temporary diversion of public footpath, ancient woodland buffer, public footpath buffer, pond buffer, hedge buffer, swale buffer and mitigation planting and maintenance corridor.
- (ix) **Work No. 7** (a)-(f): temporary construction and decommissioning compound, comprising installation of portacabins providing office and welfare facilities, parking, storage containers, secure storage compound, temporary hardstanding and internal security fencing with gates.

2.12 The Authorised Development includes such other ancillary works as may be necessary or expedient for the purposes of or in connection with the relevant parts of the Authorised Development and which fall within the scope of work assessed by the environmental statement. These are under the heading Site Wide Works and include —

- (a) foundations, drainage, culverts and lighting;
- (b) bunds, embankments and swales;
- (c) jointing bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape and other works associated with cable laying;
- (d) altering the course of or otherwise constructing over or under non-navigable watercourses;
- (e) site preparation works, site clearance; earthworks (including soil stripping and storage, site levelling), remediation of contamination;

- (f) working sites, storage areas, temporary vehicle parking, means of access, internal roads and tracks, laydown areas, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences and their restoration;
- (g) landscape and biodiversity mitigation and enhancement;
- (h) horizontal directional drilling; and
- (i) works for the benefit or protection of land affected by the Authorised Development.

2.12.1 The Applicant considers the points above to be important in ensuring there is no impediment to delivery where works have been assessed and examined but are not specifically referred to. This is an approach which is common to many made Orders, for example The Cleve Hill Solar Park Order 2020 and Riverside Energy Park Order 2020.

2.12.2 The Applicant also seeks powers and rights in the Order to enable it to effectively undertake the maintenance works required for the life time of the Authorised Development.

Development Phasing

2.13 The Applicant wishes to retain the flexibility to construct the Authorised Development in phases. The proposed approach to phasing is described in Chapter 4 of the ES and will be carried out in accordance with specified Works. It is envisaged that the solar generating station will operate for 35 years. It will be supported by the battery energy storage facility. A single substation compound will serve the whole development and connect to the distribution network (as part of Work No.3) into an underground 132kV cable already existing within the Order Limits.

2.14 The requirements (Schedule 2, Part 1) allow for the development to take place in phases. The size of each phase will be determined by the submission of a phasing plan prior to the commencement of the Authorised Development (see requirement 5, Part 1, Schedule 2). Once the phases are established the discharge of requirements may take place on a phased basis in accordance with the a phasing plan.

Parameters in the Order

- 2.15 The design parameters for the Authorised Development are specified and assessed in the ES. The ES captures the important parameters necessary to ensure the Authorised Development is not constructed in such a way that would exceed the worst case scenario assessed in the ES.
- 2.16 An outline DAS has been prepared which is in accordance with the details found in the ES. The detailed design of the Authorised Development shall be in accordance with the ES as secured by a requirement of the Order. This approach is intended to provide flexibility in the design of the Authorised Development, such that new technology can be engaged, whilst ensuring compliance with the ES.

3. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 3.1 This Explanatory Memorandum is prepared to explain the purpose and effect of each article of, and the Schedules to, the draft Order, as required by Regulation 5(2)(c) of the APFP Regulations.
- 3.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, it can be helpful to explain variations made in the Order compared to the model provisions.
- 3.3 The Order includes a number of provisions to enable the construction, operation and decommissioning of the Authorised Development. These are briefly described below and then considered in more detail in the following sections:-
- (i) Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
 - (ii) Part 2: Articles 3 to 4 provide development consent for the Authorised Development and allow it to be constructed and maintained. Article 5 sets out who has the benefit of the powers of the Order and how those powers can be transferred. Article 6 modifies the legislative provisions of the Hedgerow

Regulations 1997 and ensures that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO.

- (iii) Article 7 provides a defence to proceedings in respect of statutory nuisance;
- (iv) Part 3: Article 8 allows the temporary stopping up and diversion of a public footpath;
- (v) Part 4: Articles 9 and 10 set out two supplemental powers relating to discharge of water, authority to survey and investigate land;
- (vi) Part 5: Article 11 allows the operation of the generating station
- (vii) Part 6: Articles 12 - 20 include various general provisions in relation to the Order:-
 - (a) Article 12 sets out the procedure for the removal of any human remains disturbed as a result of the Authorised Development;
 - (b) Article 13 confirms that the land is to be treated as 'operational land';
 - (c) Articles 14 & 15 specify the certification of documents that form the Application and how notices shall be served;
 - (d) Articles 16 covers the felling and lopping of trees, or removal of hedgerows;
 - (e) Article 17 sets out the arbitration process in case of disagreements under the Order;
 - (f) Article 18 provides an ability to use the appeal mechanism in s.78 of the 1990 Act where a party either refuses or withholds consent required under a requirement attached to the Order;
 - (g) Article 19 explains the application of landlord and tenant law in conjunction with the Order; and
 - (h) Article 20 provides protection for statutory undertakers through the protective provisions (set out in Schedule 6).

3.4 Schedules: there are 6 Schedules to the Order as follows:

- (i) Schedule 1: the description of the Authorised Development;
- (ii) Schedule 2: Part 1 the requirements (a form of control akin to planning conditions) and Part 2 provides the procedure for the discharge of requirements;
- (iii) Schedule 3: sets out details of a public footpath to be temporarily closed and diverted;
- (iv) Schedule 4: sets out details of areas of hedgerows that need to be removed as a result of the Authorised Development
- (v) Schedule 5: the Arbitration Rules – sets out the basis on which disputes may be resolved; and
- (vi) Schedule 6: contains protective provisions for statutory undertakers.

4. **PURPOSE OF THE ORDER**

4.1 As the Authorised Development comprises a generating station with a capacity of over 50MW, in England, it is an NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act in order to construct and operate the Authorised Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the 2008 Act).

4.2 The Applicant is therefore making the Application to the Secretary of State for a development consent order for the construction, operation and decommissioning of a solar generating station and Associated Development.

4.3 The Order refers to the person authorised to exercise the powers in the Order as 'the undertaker', and defines the Undertaker as INRG Solar (Little Crow) Limited, the Applicant.

4.4 The Order will provide for the construction, operation and decommissioning of the Authorised Development.

- 4.5 Unlike the majority of applications for development consent the Authorised Development does not require the Order to authorise the compulsory acquisition of land and/or rights over land. The Authorised Development will not require the extinguishment of any interests in or rights over land (see 4.7 below).
- 4.6 The Book of Reference sets out a description of the land and interests included in the Order. The Order does not include provision for any powers of compulsory acquisition or powers to take temporary possession of land, as these are not required to construct or operate the Authorised Development.
- 4.7 All of the land included within the Order Limits is in one of the following two categories:
- Land over which the Applicant has an option. To the extent that there are leases or rights benefiting third parties (set out in the Book of Reference), these do not impact on the Authorised Development or are in favour of statutory undertakers and either unaffected by the Authorised Development or dealt with pursuant to Article 20 (see further below). This applies to the existing overhead lines, a water main within the Order Limits belonging to Anglian Water and any other statutory undertaker apparatus. There are some slivers of land within the Order Limits which were unregistered. Steps have been taken by the landowners to register these areas and the registrations are pending. These areas are incorporated into the options held by the Applicant; and
 - Public highway - part of the land required for Work Nos. 5 and 6 is public highway and is included within the Order Limits to allow access. These works do not change the nature of the land or use, which will remain as public highway, altered as permitted pursuant to the terms of the Order (see 5.12 below).
- 4.8 The land to be used for the Authorised Development is identified on the Land Plan including Order Limits (reference 2.1 LC DRW).
- 4.9 The matters for which development consent is sought have been summarised in paragraphs 2.10 and 2.11 above and are described more formally in Schedule 1 to the Order.

- 4.10 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The Secretary of State must therefore be satisfied that all the elements included within the Authorised Development are either part of the NSIP or are associated development, in order to include them in the Order pursuant to section 115 of the 2008 Act.
- 4.11 The solar generating station and related development within Work No. 1 constitutes "development for which development consent is required" (as this is an NSIP, as set out above). The Order also includes other development which is Associated Development, which is included at Schedule 1, paragraph 1, Work Nos. 2A or 2B and 3-7.
- 4.12 The Applicant has considered Work Nos. 2A or 2B and 3-7 against the policy and criteria in DCLG 'Guidance on associated development applications for major infrastructure projects' (April 2013) - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115.
- 4.13 The approach taken by the Applicant between the part of the Authorised Development which forms the NSIP and those parts that form Associated Development follows the approach taken by other DCO applications to date.
- 4.14 The law relating to the consenting of battery energy storage is changing on 2 December 2020. Prior to this change a battery energy storage system over 50MW would have been an NSIP in its own right, however following this change it can now be Associated Development.
- 4.15 The battery energy storage system has a direct relationship with the solar farm because it will take any over generation of electricity produced in times of peak capacity and store it until it needs to be released. This increases the efficiency of the solar farm and permits the most effective capture of energy thereby supporting its operation as a generating station. The battery energy storage system would not be constructed without the solar farm and whilst the solar farm is supported by the battery energy storage system, it is not dependent upon it.

- 4.16 In particular, Work Nos. 2A or 2B and 3-7 as specified in Schedule 1 are:
- (i) directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the solar generating station (paragraph 5(i));
 - (ii) subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
 - (iii) proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and
 - (iv) of a nature which is typically brought forward alongside a solar generating station or battery energy storage system (paragraph 6);
 - (v) listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention:
 - (a) "Connection to Electricity Networks" and "underground lines" would include the substation and grid connection works (Work Nos. 3 and 4);
 - (b) "Substations" would include the substation (Work No. 4);
 - (c) "Formation of new or improved vehicular or pedestrian access (to work sites etc), whether temporary or permanent" would include access (Work No. 5);
 - (d) "Diversion or realignment of watercourses" would include works for drainage and cable laying (Work Nos. 3, 4 and 5);
 - (e) "Hard and soft landscaping" would include planting and ecological works and other works to mitigate adverse impacts (Work Nos. 3, 5 and 6); and
 - (f) "Temporary accommodation for staff on site... to enable the construction, operation and maintenance of the principal development" (Work No.7).

5. PROVISIONS OF THE ORDER

5.1 The Order consists of operative provisions, each referred to as articles, and Schedules. The articles are considered below in numerical order (split between the 'Parts' of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

Part 1 (Preliminary) and Part 2 (Principal Powers)

5.2 **Article 1 (*Citation and commencement*)** and **Article 2 (*Interpretation*)** are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

5.3 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions including:-

- (i) Definitions of documents submitted as part of the Application and which are referred to in the Order which have been added;
- (ii) A definition of "commence" has been added to the Order, which excludes the pre-commencement activity of 'site preparation works' covering pre-construction surveys, monitoring and site investigations. The effect of the definition is that site preparation works can be carried out prior to the requirements contained in Schedule 2 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The Applicant notes the definition of 'commence' was deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by

the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had 'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008';

- (iii) A definition of "maintain" has been added to clarify what is authorised under article 4 (see below) so as to provide the Applicant with certainty. In particular it does not permit the Undertaker to carry out any maintenance operations which would cause different environmental effects to those identified in the ES;
- (iv) The "undertaker" is defined as INRG Solar (Little Crow) Limited, who has the benefit of the provisions of the Order, subject to the provisions of article 5 (see below).

5.4 **Article 3 (*Development consent etc granted by the Order*)** grants development consent for the Authorised Development. Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different sections or parts of the Authorised Development. This split of the Authorised Development into different works enables the Order to refer to different parts of the Authorised Development by citing the relevant work number for that area.

5.5 **Article 4 (*Maintenance of authorised development*)** is necessary to ensure that any required maintenance activities can be carried out. Article 4 reflects the terms of the model provisions but also clarifies that any maintenance works must be within the Order Limits. This wording has appeared in previous orders including The Kemsley Paper Mill K4 Combined Heat and Power Generating Station Order 2019 and The Cleve Hill Solar Park Order 2020.

5.6 Article 5 (Consent to transfer benefit of the Order) 5(1) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the Undertaker, rather than anyone with an interest in the land. Given the scale of the Authorised Development it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been

made, including The East Anglia THREE Offshore Wind Farm Order 2017, The Kemsley Paper Mill K4 Combined Heat and Generating Station Order 2019 and The Cleve Hill Solar Farm Order 2020.

- 5.7 Article 5(2) provides that the Undertaker can, with the written consent of the Secretary of State, either transfer the benefit of the Order and/or grant to another person the benefit of the provisions of the Order and such related statutory rights as may be agreed. The Order includes drafting which makes it clear that the provisions of Article 5 can be applied either whole or in part. The requirement to obtain the consent of the Secretary of State is unnecessary under the circumstances referred to in sub-paragraph (6) of the Article where the transferee or lessee is a holder of a licence under the Electricity Act 1989.
- 5.8 Article 5 includes a procedure to be adopted when making an application to the Secretary of State for consent. This approach is considered necessary to provide certainty in the absence of any other statutory procedure for obtaining consent. It is consistent with The Norfolk Vanguard Offshore Wind Farm Order 2020 and The Cleve Hill Solar Park Order 2020. The essential elements of this procedure are as follows:
- (i) Before any application is made to the Secretary of State the Undertaker shall consult with the Secretary of State;
 - (ii) The Secretary of State shall determine an application for consent under 5(4) of this article within 8 weeks commencing on the date the application is received. This period can be extended where agreed in writing with the Undertaker;
 - (iii) Where the Secretary of State is minded to refuse any application or fails to determine an application within 8 weeks of receipt then the Undertaker may refer the matter for determination under article 17 (arbitration);
 - (iv) Prior to any transfer or grant taking effect the Undertaker is required to notify in writing the Secretary of State and the Local Planning Authority. Sub-paragraphs (8) to (10) of the Article stipulate the notification requirements that apply. In particular the notice must be received by the recipient a minimum of five days prior to the transfer taking effect.

- 5.9 Article 5(5) provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:
- (i) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - (ii) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the Undertaker; and
 - (iii) the benefits or rights conferred under sub-paragraph (2) of the article are subject to the same restrictions, liabilities and obligations as applies to the Undertaker.
 - (iv) Article 5 is preceded in The Cleve Hill Solar Park Order 2020.

5.10 **Article 6 (*Disapplication, application and modification of legislative provisions*)**. This article is derived from Model Provision 6. Paragraph (1) provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 so that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a development consent order made pursuant to the 2008 Act. The Hedgerows Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to development authorised by a development consent order and therefore this modification is necessary to extend the exception to development authorised by a development consent order. This approach has precedent in the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017.

5.11 Paragraph (2) ensures that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO, ensuring no risk of criminal liability pursuant to section 161 of the 2008 Act. The paragraph encompasses any development authorised by a general development order as well as an express planning permission. This approach features in many Orders and has precedent in Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order, Northampton Gateway, West Midlands Interchange and York Potash Harbour DCO.

- 5.12 **Article 7 (*Defence to proceedings in respect of statutory nuisance*)** provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the Authorised Development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the Authorised Development. Article 7 is a model provision.

Part 3 (Public footpaths)

- 5.13 **Article 8 (*Temporary Closure and diversion of public footpath*)** allows the Undertaker, where it is in connection with the carrying out of the Authorised Development, to temporarily close and divert a public right of way during construction and decommissioning where it is specified in Schedule 3 of the Order to the extent stipulated in the same schedule. This is required to ensure the safety of users of the path. This article is not a model provision, but it is preceded in The East Anglia THREE Offshore Wind Farm Order 2017 and The Cleve Hill Solar Farm Order 2020.

Part 4 (Supplemental Powers)

- 5.19 **Article 9 (*Discharge of water*)** is a model provision which enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to s.85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. The article has also been updated to reflect the current approach to the drafting of statutory instruments and so that if the Undertaker makes an application for consent under the provisions of the article but the relevant party does not provide notification of its decision within 28 days of the Undertaker's application then consent will have been deemed to have been given.

- 5.20 **Article 10 (*Authority to survey and investigate the land*)** is a modified model provision which allows the Undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.
- 5.21 The model provision has been modified so that trial holes may not be made in a highway or private street without the consent of the highway authority or street authority. If a highway authority or street authority after having received an application to make trial holes within a highway fails to notify the Undertaker within 28 days of having received the application it will have been deemed to have provided consent. This approach has been adopted in The Walney Extension Offshore Wind Farm Order 2014, The Hornsea One Offshore Wind Farm Order 2014, The Hornsea Two Offshore Wind Farm Order 2016, The East Anglia THREE Offshore Wind Farm Order 2017 and The Cleve Hill Solar Farm Order 2020.

Part 5 (Operations)

- 5.22 **Article 11 (*Operation of Generating Station*)** authorises the Undertaker to operate and use the solar generating station comprising the Authorised Development. Article 11(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed, in addition to the Order. This article was not included in the model provisions but it is considered to be a sensible addition to avoid any potential disagreement about whether the undertaker is authorised to operate, as well as construct, the Authorised Development. It has become common wording in development consent orders including The Kemsley Paper Mill K4 Combined Heat and Power Generating Station Order 2019 and The Cleve Hill Solar Park Order 2020.

Part 6 (Miscellaneous and general)

- 5.23 **Article 12 (*Removal of Human Remains*)** disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the Authorised Development. Article 12 is based upon article 17 of the model provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the

Authorised Development. This has been included as the Applicant has not been able to rule out the presence of human remains within the Order Limits given the archaeological history of the area.

- 5.24 This article departs from the Model Provision in that sub-paragraph (12) excludes the requirement to give notice before the removal of remains which the Undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in The Crossrail Act 2008 and The A303 (Amesbury to Berwick Down) Development Consent Order 2020.
- 5.25 Sub-paragraph (17) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950. The drafting in sub-paragraphs (16) and (17) has precedent in The River Humber Gas Pipeline Replacement Order 2016, although this Order does not apply section 238 (use and development of consecrated land) of the Town and Country Planning Act 1990 as there is no consecrated land within the Order Limits.
- 5.26 Taken together the effect of Article 12 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. It is required by the Undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project. Precedent for the article is provided by article 20 of The River Humber Gas Pipeline Replacement Order 2016.
- 5.27 **Article 13 (Operational land for the purposes of the 1990 Act)** is a model provision which confirms that the consent granted by the Order is to be treated as a planning permission for the purposes of section 264(3)(a) of the 1990 Act.
- 5.28 **Article 14 (Certification of plans and documents etc)** is a model provision which lists various plans and other documents that are to be certified by the Secretary of State as true copies of those documents referred to in the Order.

- 5.29 **Article 15 (*Service of Notices*)** governs the proper services of notices under the Order and is considered necessary by the Applicant because it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner. This article was not included in the model provisions but it is based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006. This is now a common article in development consent orders (see for example The Brechfa Forest Wind Farm Connection Order 2016 and The Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order 2019).
- 5.30 **Article 16 (*Felling or lopping of trees and removal of hedgerows*)** provides that the Undertaker may fell or lop or cut back the roots of any tree or shrub that is near the Authorised Development, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. This is required by the Applicant to ensure that vegetation surrounding the Authorised Development does not interfere with the Authorised Development. Compensation is payable for any loss or damage caused. This is based on, but is a modification of, the model provisions.
- 5.31 Paragraph (1) amends the Model Provisions so it is clear that the power extends to trees or shrubs that are “within or encroaching upon the Order Limits”. The model provisions have also been modified by the deletion of “passengers” which is not relevant to the Authorised Development. Provisions relating to compensation are set out in paragraphs (2) and (3) and these are identical to the model provisions. New paragraphs (4) and (5) have been inserted to provide the additional power for the Undertaker to remove hedgerows or part of them within the Order Limits that may be required for the purposes of carrying out the Authorised Development. Distinction is made here between hedgerows and important hedgerows in accordance with the provisions of the Hedgerow Regulations (SI 1997/1160). Precedent for this power includes The North Wales Wind Farms Draft Connection Order 2015 and The Brechfa Forest Wind Farm Connection Order 2016. It is drafted in accordance with Advice Note 15 (most particularly paragraph 22 and the “good practice point” on hedgerows).

5.32 **Article 17 (Arbitration)** is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 5, has been included in The Cleve Hill Solar Farm Order 2020. This is based upon article 42 of the model provisions and governs what happens when two parties disagree on the implementation of any provision in the Order. The matter is to be settled by arbitration with the Secretary of State to determine who is appointed as the arbitrator where this cannot be agreed between the parties. This is required by the Applicant to provide certainty in the event of a disagreement.

This article applies Schedule 5 of the Order which sets out further detail of the arbitration process. The detail of Schedule 5 is set out below.

5.33 **Article 18 (Requirements, appeals, etc)** has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 2 of the Order. This provides a formal process for dealing the requirements and means that the Undertaker has a right of appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or not determined. This has been adopted in previous Orders such as The East Anglia ONE Offshore Wind Farm Order 2014 and The Cleve Hill Solar Park Order 2020.

5.34 **Article 19 (Application of landlord and tenant law)** is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole or any part of of the Authorised Development or the right to operate the same or any agreement entered into by the Undertaker for the construction, maintenance, use or operation of the Authorised Development.

5.35 **Article 20 (Protective Provisions)** provides for Schedule 6 to have effect, which protects the interests of statutory undertakers.

6. **SCHEDULES**

Schedule 1

6.1 Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents a different area of the Authorised Development. This split of the Authorised Development between different work numbers enables the Order to refer to different parts of the Authorised Development by citing the relevant work number.

- 6.2 The works set out in Schedule 1 to the Order are explained in sections 2.10 and 2.11 above.

Schedule 2

- 6.3 Schedule 2, Part 1 (*Requirements*) sets out the draft requirements which apply to the carrying out of and operation of the Authorised Development under the Order. The requirements have a similar purpose to planning conditions.
- 6.4 The requirements closely relate to the mitigation set out in the ES and a number of them specifically refer to the ES in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 6.5 Many of the requirements require submission of details for approval to the Local Planning Authority. Those requirements are drafted with a view to enabling the Undertaker to obtain approval for part of the Authorised Development and not require it to discharge the requirement for the whole of the Authorised Development. This permits an appropriately flexible approach to the discharge of requirements by the Undertaker and provides an appropriate balance between development not starting until details are approved, and allowing other parts of the Authorised Development (where details are already approved) to be constructed.
- 6.6 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the Undertaker will construct, operate or maintain the Authorised Development to be submitted for approval to the Local Planning Authority. The model provisions have been adapted throughout to provide that it is for the Local Planning Authority to approve the relevant document (rather than, as in the model provisions, the Infrastructure Planning Commission).
- 6.7 In all cases where a scheme or plan is to be submitted for approval to an approving authority there is a requirement for the Undertaker to implement the approved scheme or plan.
- (i) The requirements open with a short interpretation section
 - (ii) Requirement 2: ***Time limit*** – This requirement is based upon the model provisions and places a limit of 5 years for commencement of the Authorised Development.

- (iii) Requirement 3: ***Expiry of development consent*** - This sets a time-limit on the Authorised Development of 35 years with the Undertaker to cease generation of electricity on a commercial basis no later than the 35th anniversary of the first export date from Work No.1.

- (iv) Requirement 4: ***Decommissioning and site restoration*** – This requires a decommissioning and site restoration scheme to be submitted to and approved by the Local Planning Authority not less than 6 months before the 35th anniversary of the first export date. The scheme must provide for the removal of all above ground elements of the Authorised Development with the exception of the substation (unless this is required by the substation operator) and the access track (unless otherwise agreed with the landowner).

- (v) Requirement 5: ***Phases of Authorised Development*** – The requirement stipulates that the Authorised Development must be not be carried out until a scheme setting out the phases of construction has been submitted to and approved by the Local Planning Authority.

- 6.7.1 Requirement 6: ***Detailed design approval*** – This requirement provides that no development may be commenced for a phase of the Authorised Development until the following details for that phase have been submitted to and approved by the Local Planning Authority:
 - (a) layout;
 - (b) scale;
 - (c) proposed finished ground levels and elevations;
 - (d) external appearance;
 - (e) hard-surfacing materials;
 - (f) parking and circulation areas;
 - (g) refuse or other storage units, signs and lighting;

- (h) power and communications cables and pipelines;
- (i) fencing;
- (j) security measures (e.g. CCTV) and
- (k) any mitigation measures necessary to address noise impacts.

The details submitted must be in accordance with the principles and assessments in the ES and the Works Plan.

6.7.2 Requirement 7: **Battery safety management** – Prior to the commencement of Work No.2A or Work No. 2B as notified to the local authority a battery safety management plan (“BSMP”) must be submitted to and approved by the Local Planning Authority. The BSMP must either accord with the outline BSMP or detail such changes as required. If changes are proposed to the outline BSMP the local authority must consult with the Health and Safety Executive and Humberside Fire and Rescue Service prior to approval.

6.7.3 Requirement 8: **Construction environmental management plan (“CEMPs”)** - The Undertaker must submit to the Local Planning Authority a construction environmental management plan and a construction environmental management plan for biodiversity, which accord with the Outline CEMPs for approval before commencement of each new phase of the Authorised Development. The construction of the Authorised Development must be in accordance with the CEMPs as approved.

6.7.4 Requirement 9: **Construction traffic management plan (“CTMP”)** - The Undertaker must submit to the Local Planning Authority a construction traffic management plan for approval which accords with the Transport Statement and the outline CTMP before commencement of each phase of the Authorised Development.

6.7.5 Requirement 10: **Landscape and ecological management plan (“LEMP”)** – The Undertaker is required, before it commences each phase of the Authorised Development, to

submit a written LEMP for that phase which accords with the Outline LEMP, for approval to the Local Planning Authority. All works are required to be carried out in accordance with the details specified in the requirement and must provide details of ongoing management and a timetable for long-term landscape management of the land within the Order Limits.

- 6.7.6 Requirement 11: **Construction hours** – Construction works will not take place outside the hours specified hours of 7.00-18.00 hours Monday to Friday and 8.00-13.30 hours on Saturday unless they are emergency works or works that are not audible at the boundary of the Order Limits.
- 6.7.7 Requirement 12: **Surface and foul water drainage** – There is a requirement for the Undertaker to obtain the written approval of the Local Planning Authority in respect of surface water treatment and where relevant foul water drainage for each phase of the Authorised Development.
- 6.7.8 Requirement 13: **Archaeology** – The Undertaker must not commence the Authorised Development until the archaeological exclusion zone around Gokewell Priory is in place. The requirement also prohibits digging in the 'no-dig' zone. The Undertaker must submit to the Local Planning Authority a written scheme of archaeological investigation for each phase of the Authorised Development for approval, before commencement of works within the relevant phase, identifying any necessary watching briefs. Thereafter the scheme must be undertaken in accordance with the approved details.
- 6.7.9 Requirement 14: **Protected species** – No work is to commence within any phase of development until final pre-construction survey work has been carried out for that phase to establish whether any European protected species are present on the affected land or in any of the trees to be lopped or felled. If the pre-construction surveys identify any European protected species then works within that phase cannot commence until the Local Planning Authority has approved a scheme of protection and mitigation measures or a European protected species licence

has been granted. The scheme may only be approved by the Local Planning Authority and, where appropriate, the mitigation scheme must be informed by pre-consultation with the local planning authority and/or Natural England.

6.7.10 Requirement 15: **Temporary diversion to public footpath** – The Undertaker is required to submit to the Local Planning Authority for approval, a public rights of way management plan for any phase of the Authorised Development that requires public footpath 214 to be temporarily closed and diverted within that phase. The plan must include measures to minimize the length of the sections of public rights of way to be closed and details of the publicity and signage to be provided.

6.7.11 Requirement 16: **Requirement for written approval** – This requirement confirms where the approval of a party is required that it must be given in writing.

6.7.12 Requirement 17: **Amendments to approved details** – This requirement allows details which have been submitted and approved by the Local Planning Authority (or another person) to be amended/varied in writing by the Local Planning Authority. The amendment or variation must always be in accordance with the principles and assessment undertaken in the ES and must not give rise to any materially new or different environmental effects from those assessed in the original ES.

6.8 Schedule 2, Part 2 (*Procedure for Discharge of Requirements*) sets out how requirements are to be discharged and sets out how the appeal process will run if a decision to discharge a requirement was challenged.

Schedule 3

6.9 Schedule 3 (*Public footpath to be temporarily closed and diverted*) sets out details of the public footpath to be temporarily closed and diverted. It references public footpath 214 and sets out the extent, by reference to a plan, that may be temporarily closed and diverted.

Schedule 4

- 6.10 Schedule 4 (*Hedgerows*) sets out by reference to a plan, the hedgerows and important hedgerows which will be affected by the Authorised Development. Removal of small sections of hedgerow identified on the plans by number will be undertaken in the locations shown to allow cabling and access.

Schedule 5

- 6.11 Schedule 5 (*Arbitration Rules*) sets out the process to be followed in relation to disputes that arise in relation to the Order.

Schedule 6

- 6.12 Schedule 6 (*Protective Provisions*) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the Authorised Development. The Undertaker has engaged with relevant statutory undertakers and to date Anglian Waters and Openreach have requested that specific protective provisions be applied. The protective provision at Part 1 is intended to cover those statutory undertakers with interests within the Order Limits.
- 6.13 Anglian Waters have highlighted a water main which runs through the site and agreement has been reached on the protective provisions for inclusion in the Order. These are at Part 2.
- 6.14 Openreach requested that protective provisions be added to include provision for the protection of operators of electronic communications code networks. These are at Part 3.

