



# SUNNICA ENERGY FARM

EN010106

Volume 3

3.2 Explanatory Memorandum to the DCO

APFP Regulation 5(2)(c)

Planning Act 2008

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



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

**Sunnica Energy Farm**

**Explanatory Memorandum to the DCO**

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# 1 GLOSSARY

<b>“1990 Act”</b>	The Town and Country Planning Act 1990 (as amended).
<b>“1991 Act”</b>	The New Roads and Street Works Act 1991 (as amended).
<b>“2008 Act”</b>	The Planning Act 2008 which is the legislation that governs applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
<b>“Access and Rights of Way Plans”</b>	The Access and Rights of Way Plans which accompany the Application <b>[EN010106/APP/2.3]</b> (and which have been updated during the Examination), showing the accesses to the authorised development, the locations of street works and alterations of the layout of streets and the parts of public rights over which the Applicant seeks consent to use motor vehicles.
<b>“APFP Regulations”</b>	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
<b>“Applicant”</b>	Sunnica Limited (Company number 08826077). In the Order, the Applicant is referred to as the "undertaker".
<b>“Application”</b>	The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Scheme. A DCO is required pursuant to section 31 of the 2008 Act because the Scheme comprises a NSIP under section 14(1)(a) and section 15 of the 2008 Act by virtue of it being a generating station in England with a capacity of over 50MW.
<b>“Associated Development”</b>	Defined under section 115(2) of the 2008 Act as development which is associated with the principal development (i.e. the NSIP) 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.

<b>“Book of Reference”</b>	The Book of Reference, which accompanies the Application <b>[EN010106/APP/4.3]</b> (and which has been updated during the Examination), which is a reference document providing details of all land ownership interests within the Order Land with reference to the Land and Crown Land Plans.
<b>“Consultation Report”</b>	The Consultation Report, which accompanies the Application <b>[EN010106/APP/5.1]</b> that explains the consultation undertaken by the Applicant in accordance with the 2008 Act.
<b>“DCO”</b>	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a NSIP.
<b>“Design Principles”</b>	The Design Principles which are contained in the Design and Access Statement which accompanies the Application <b>[EN010106/APP/7.3]</b> (and which has been updated during the Examination).
<b>“EIA”</b>	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Scheme undertaken in accordance with the EIA Regulations.
<b>“EIA Regulations”</b>	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of NSIPs must be carried out and the procedures that must be followed.
<b>“Environmental Statement”</b>	The Environmental Statement which accompanies the Application <b>[EN010106/APP/6.1]</b> (and which has been updated during the Examination), documenting the findings of the EIA.
<b>“Existing Substation”</b>	The existing substation at Burwell, Weirs Drove, Burwell, Cambridge CB25 0BP, owned and operated by National Grid Electricity Transmission plc.

<b>“Explanatory Memorandum”</b>		This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks.
<b>“Flood Assessment”</b>	<b>Risk</b>	The Flood Risk Assessment which accompanies the Application <b>[EN010106/APP/6.2]</b> (and which has been updated during the Examination).
<b>“Funding Statement”</b>		The Funding Statement, which accompanies the Application <b>[EN010106/APP/4.2]</b> (and which has been updated during the Examination), that explains how the Scheme will be funded.
<b>“Land and Crown Land Plans”</b>		The plans which accompany the Application <b>[EN010106/APP/2.1]</b> (and which have been updated during the Examination), showing the Order Land.
<b>“MW”</b>		Megawatt.
<b>“NSIP”</b>		A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.
<b>“Order”</b>		The Sunnica Energy Farm Order, being the DCO that would be made by the Secretary of State authorising the Scheme, a draft of which has been submitted as part of the Application <b>[EN010106/APP/3.1]</b> (and which has been updated during the Examination).
<b>“Order Land”</b>		The land over which the Order would authorise compulsory acquisition and temporary possession.
<b>“Order Limits”</b>		The limits of the land to which the Application relates and shown on the Works Plans.
<b>“Relevant Authority”</b>	<b>Planning</b>	East Cambridgeshire District Council and West Suffolk Council are each the relevant planning authority for those parts of the Scheme that are in their respective administrative areas. Referred to together, these are the <b>“Relevant Planning Authorities”</b> .
<b>“Relevant Authority”</b>	<b>County</b>	Cambridgeshire County Council and Suffolk County Council are each the relevant county authority for those parts of

the Scheme that are in their respective administrative areas. Referred to together, these are the **“Relevant County Authorities”**.

<b>“Scheme”</b>	The development to which the Application relates and which is described in Schedule 1 to the Order. In the Order, the Scheme is referred to as the “authorised development”.
<b>“Secretary of State”</b>	The Secretary of State for Business, Energy and Industrial Strategy who will determine the Application.
<b>“the Sites”</b>	The three sites located in West Suffolk and East Cambridgeshire across which the Scheme is situated and which are named Sunnica East Site A, Sunnica East Site B and Sunnica West Site A and the term “Site” means any one of Sunnica East Site A, Sunnica East Site B and Sunnica West Site A (as applicable).
<b>“Statement of Need”</b>	The Statement of Need, which accompanies the Application <b>[EN010106/APP/7.1]</b> (and which has been updated during the Examination), that explains the national need for the Scheme.
<b>“Statement of Reasons”</b>	The Statement of Reasons which accompanies the Application <b>[EN010106/APP/4.1]</b> (and which has been updated during the Examination), and sets out the justification for the acquisition or interference with the Order Land.
<b>“Traffic Regulation Measures Plans – Temporary Measures”</b>	The plans, which accompany the Application <b>[EN010106/APP/2.4]</b> (and which have been updated during the Examination), showing the temporary traffic regulation measures, including temporary speed limits, areas of temporary traffic signal control and a “no right turn” prohibition.
<b>“Traffic Regulation Measures Plans – Road Closures”</b>	The plans, which accompany the Application <b>[EN010106/APP/2.4]</b> (and which have been updated during the Examination), showing the roads (including public rights of way) over which the



Applicant seeks authority to temporarily close.

**“Works Plans”**

The plans, which accompany the Application **[EN010106/APP/2.2]** (and which have been updated during the Examination), showing the Order Limits and the numbered works that form the Scheme and as described in Schedule 1 to the Order.

## 2 INTRODUCTION

### 2.1 Overview

2.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant and forms part of the Application.

2.1.2 The Applicant is seeking development consent for the Scheme, which in summary comprises the construction, operation, maintenance and decommissioning of ground mounted solar photovoltaic (“**PV**”) panel arrays; a battery energy storage system; connection to the UK electricity transmission system and other associated and ancillary development. The Scheme is situated at the Sites, and includes a cable route corridor and extension to the Burwell National Grid Substation. The Scheme is located in West Suffolk and East Cambridgeshire.

2.1.3 A DCO is required for the Scheme as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act, as it consists of a generating station with a gross electrical output capacity of over 50MW, this being a ground mounted solar PV generating station.

2.1.4 The DCO, if made, would be known as the Sunnica Energy Farm Order 202\*, a draft of which has been submitted with the Application.

2.1.5 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. It should be read in conjunction with the suite of documents accompanying the Application, in particular the Order, the Environmental Statement, the Works Plans, Land and Crown Land Plans, Book of Reference, Statement of Reasons, Consultation Report and Statement of Need.

### 2.2 Sunnica Limited

2.2.1 The Applicant is a limited company registered at Companies House under company number 08826077 and whose registered office is at 2 Crossways Business Centre Bicester Road, Kingswood, Aylesbury, England, HP18 0RA. More information on the Applicant’s ownership and corporate structure is set out in the Statement of Reasons and Funding Statement.

2.2.2 On 11 November 2020, Ofgem granted the Applicant a licence to generate electricity under section 6(1)(a) of the Electricity Act 1989. As such, the Applicant is a statutory undertaker for the purposes of the Electricity Act 1989 and the 2008 Act.

### 2.3 The Sites

2.3.1 The Scheme spans three sites: the Sunnica East Site A, Sunnica East Site B and Sunnica West Site A (defined as the “**Sites**”). These will be linked by a cable corridor, which will connect the Scheme to the National Grid at the Existing Substation in Cambridgeshire.

2.3.2 The Scheme includes the associated electrical infrastructure for connection to the national transmission system, comprising underground cables running between Sunnica East Site A, Sunnica East Site B and Sunnica West Site A (called “**Grid Connection Route A**”) and then from Sunnica West Site A to the Existing Substation (called “**Grid Connection Route B**”). The grid connection routes have been identified

as corridors of circa 100m in width and are shown on the Works Plans identified as Work No. 4.

2.3.3 The Order Limits is the area within which the Scheme may be carried out. The Order Limits is shown on the Land and Crown Land Plans and Works Plans.

2.3.4 Information about the Sites, including about the current land use and any environmental sensitivities, is provided in greater detail in Chapter 2 of the Environmental Statement, however a summary is provided below:-

### **Sunnica East Site A**

2.3.5 The Sunnica East Site A encompasses an area of approximately 223 hectares (ha) and is located approximately 0.5 kilometres (km) south east of Isleham and 3.5km east of Mildenhall. The Sunnica East Site A straddles the boundary between the counties of Cambridgeshire and Suffolk and falls within the administrative areas of East Cambridgeshire District Council and West Suffolk Council.

### **Sunnica East Site B**

2.3.6 The Sunnica East Site B encompasses an area of approximately 319ha and is located approximately 1.5km south-east of Mildenhall, 1.5km east of Freckenham and to the south of Worlington. The Sunnica East Site B is located within the county of Suffolk and falls within the administrative area of West Suffolk Council.

### **Sunnica West Site A**

2.3.7 The Sunnica West Site A encompasses an area of approximately 373ha and is located approximately 1km south of Chippenham and 1.5km west of Kennett. It is bounded by the A14 to the south and straddles the A11 to the east. The Sunnica West Site A lies within the county of Cambridgeshire and in the East Cambridgeshire District Council administrative area.

## **2.4 The Scheme**

2.4.1 A more detailed description of the Scheme and the Sites can be found in Chapter 3 of the Environmental Statement. It comprises one generating station, being the NSIP, which is described in Work Number 1 in Schedule 1 of the Order. The Scheme also includes Associated Development, which comprises Work Numbers 2-10 in Schedule 1 of the Order.

2.4.2 Work Number 1 is split into three sub-work numbers – Work No. 1A, Work No. 1B and Work No. 1C. This is to allow differentiation between the Sites, as each sub-work corresponds to a different Site. The below information summarises all elements of the NSIP:

- a. **Work No. 1** consists of a NSIP, being the ground mounted solar PV generating station with a gross electrical output capacity of over 50 MW including:-
  - i. **Work No. 1A** – works on the Sunnica East Site A comprising solar modules; solar stations; electrical cables including electrical cables connecting Work No. 1A to Work No. 3A (onsite substation); monitoring and control systems housed within a control room building or container;

weather stations and direct current (DC) electrical boxes.

ii. **Work No. 1B** – works on the Sunnica East Site B comprising solar modules; solar stations; electrical cables including electrical cables connecting Work No. 1B to Work No. 3B (onsite substation); monitoring and control systems housed within a control room building or container; weather stations and DC electrical boxes.

iii. **Work No. 1C** – works on the Sunnica West Site A comprising solar modules; solar stations; electrical cables including electrical cables connecting Work No. 1C to Work No. 3C (onsite substation); monitoring and control systems housed within a control room building or container; weather stations and DC electrical boxes.

b. The description of Work No.1 refers to a gross electrical output of over 50MW. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.

2.4.3 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos 2 to 10 in Schedule 1 of the Order. This comprises the following elements:

a. **Work No. 2** consists of a battery energy storage system of up to 500 MW of power at the point of grid connection including:-

i. **Work No. 2A** – a battery energy storage compound on the Sunnica East Site A comprising battery energy storage cells; a structure protecting the battery energy storage cells (being either one container or multiple containers joined to each other); heating, ventilation and air conditioning (HVAC) or liquid cooling systems; battery stations; monitoring and control systems (housed within a container with the HVAC or liquid cooling systems or located separately in its own container or control room); electrical cables including electrical cables connecting to Work No. 3A (onsite substation); fire safety infrastructure and a water storage structure for the purpose of firefighting comprising fire water tanks and fire water containment.

ii. **Work No. 2B** – a battery energy storage compound on the Sunnica East Site B comprising battery energy storage cells; a structure protecting the battery energy storage cells (being either one container or multiple containers joined to each other); heating, ventilation and air conditioning (HVAC) or liquid cooling systems; battery stations; monitoring and control systems (housed within a container with the HVAC or liquid cooling systems or located separately in its own container or control room); electrical cables including electrical cables connecting to Work No. 3B (onsite substation); fire safety infrastructure and a water storage structure for the purpose of firefighting comprising fire water tanks and fire water containment.

iii. **Work No. 2C** – a battery energy storage compound on the Sunnica West Site A comprising battery energy storage cells; a structure

protecting the battery energy storage cells (being either one container or multiple containers joined to each other); heating, ventilation and air conditioning (HVAC) or liquid cooling systems; battery stations; monitoring and control systems (housed within a container with the HVAC or liquid cooling systems or located separately in its own container or control room); electrical cables including electrical cables connecting to Work No. 3C (onsite substation); fire safety infrastructure and a water storage structure for the purpose of firefighting comprising fire water tanks and fire water containment.

- b. **Work No. 3** – onsite substations including:-
- i. **Work No. 3A** – works on the Sunnica East Site A comprising a substation; control building or container; welfare facilities; hardstanding areas and electrical cables connecting the substation to Work Nos. 1A, 2A and 4 (electrical cables connecting to the extension to the Existing Substation).
  - ii. **Work No. 3B** – works on the Sunnica East Site B comprising a substation; shunt reactor; control building or container; welfare facilities; hardstanding areas and electrical cables connecting the substation to Work Nos. 1B, 2B and 4 (electrical cables connecting to the extension to the Existing Substation).
  - iii. **Work No. 3C** – works on the Sunnica West Site A comprising a substation; control building or container; welfare facilities; hardstanding and parking areas and electrical cables connecting the substation to Work Nos. 1C, 2C and 4 (electrical cables connecting to the extension to the Existing Substation).
- c. **Work No. 4** – works to lay electrical cables connecting each of the Sites to each other and then connecting to the Existing Substation, and up to 15 temporary construction laydown areas required for the rolling construction of the electrical cable comprising areas of hardstanding, compacted ground or track matting; car parking; area to store materials and equipment; site and welfare offices and workshops; security infrastructure, including cameras, perimeter fencing and lighting; safety infrastructure to warn and manage traffic when crossing roads or other obstacles; site drainage and waste management infrastructure and electricity, water, waste water and telecommunications connections.
- d. **Work 5** – Not used.
- e. **Work No. 6** – works to create, enhance and maintain green infrastructure, including:-
- i. **Work No. 6A** – works on the Sunnica East Site A comprising soft landscaping; landscape and biodiversity enhancement measures; earth works; permissive paths; hard standing and hard landscaping; drainage and irrigation infrastructure; means of enclosure and the improvement, maintenance and use of existing private tracks.
  - ii. **Work No. 6B** – works on the Sunnica East Site B comprising soft landscaping; landscape and biodiversity enhancement measures; earth works; permissive paths; hard standing and hard landscaping; drainage

- and irrigation infrastructure; means of enclosure and the improvement, maintenance and use of existing private tracks.
- iii. **Work No. 6C** – works on the Sunnica West Site A comprising soft landscaping; landscape and biodiversity enhancement measures; earth works; hard standing and hard landscaping; drainage and irrigation infrastructure; means of enclosure and the improvement, maintenance and use of existing private tracks.
- f. **Work No. 7** – temporary construction laydown areas including:-
- i. **Work No. 7A** – a temporary construction laydown area on the Sunnica East Site A comprising areas of hardstanding; car parking; site and welfare offices and workshops; security infrastructure; site drainage and waste management infrastructure and electricity, water, waste water and telecommunications connections.
  - ii. **Work No. 7B** – up to five temporary construction laydown area on the Sunnica East Site B comprising areas of hardstanding; car parking; site and welfare offices and workshops; security infrastructure; site drainage and waste management infrastructure and electricity, water, waste water and telecommunications connections.
  - iii. **Work No. 7C** – up to three temporary construction laydown area on the Sunnica West Site A comprising areas of hardstanding; car parking; security infrastructure; site drainage and waste management infrastructure and electricity, water, waste water and telecommunications connections.
- g. **Work No. 8** – office and warehouse buildings and permanent compounds comprising:-
- i. **Work No. 8A** – a warehouse building and a permanent compound on the Sunnica East Site A comprising a warehouse building for the storage of spare parts and office and welfare facilities; a canteen located either within the warehouse building or in a separate container or building; waste skips; parking areas and a permanent compound area.
  - ii. **Work No. 8B** – a warehouse building and a permanent compound on the Sunnica East Site B comprising a warehouse building for the storage of spare parts and office and welfare facilities; a canteen located either within the warehouse building or in a separate container or building; waste skips; parking areas and a permanent compound area.
- h. **Work No. 9** – works to existing streets to facilitate access to Work Nos. 1 to 8.
- i. **Work No. 10** – works to create and maintain a stone curlew reserve.
- j. The Associated Development includes such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Scheme but only within the Order Limits and insofar as these works or operations are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement, including:-

- i. works within highways, including:-
  - a. the alteration of the layout of any street permanently or temporarily, including increasing or reducing the width or level of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
  - b. street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
  - c. relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
  - d. works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street; and
  - e. works to facilitate traffic management and to deliver information relating to the authorised development;
- ii. works for the provision of fencing and security measures such as CCTV, columns, lighting, DC string boxes and communication boxes;
- iii. laying down of internal access tracks, ramps, means of access, footpaths, roads and cycle routes;
- iv. bunds, embankments, trenching and swales;
- v. boundary treatments, including means of enclosure;
- vi. glint and glare boarding;
- vii. laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;
- viii. foundations for structures or buildings being piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, pillars fixed to a concrete foundation, or a pillar set in concrete in a pre-made hole in the ground (micro piled);
- ix. works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- x. electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position

- of, such services and utilities connections;
- xi. works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
  - xii. surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
  - xiii. site establishments and preparation works including site clearance; earthworks and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land; and
  - xiv. tunnelling, boring and drilling works; and
  - xv. landscaping and mitigation works.

2.4.4 Work No. 2 consists of a battery energy storage system with a gross storage capacity of over 50 MW and up to 500 MW of power at the point of grid connection and related infrastructure, which would be situated on Sunnica East Site A, Sunnica East Site B and Sunnica West Site A. In previous DCO applications which contained a battery energy storage element as an aspect of an energy generating station (such as the **Cleve Hill Solar Park Order 2020**), this part of the authorised development was categorised as a NSIP in itself, as an energy storage facility with a gross storage capacity of over 50 MW fell within the definition of an onshore generating station under sections 14(1) and 15 of the 2008 Act. However, the legislative position has recently changed. As of 2 December 2020, energy storage facilities with a proposed capacity of over 50 MW (with the exception of pumped hydroelectric storage) are no longer defined as NSIPs under the 2008 Act, and therefore where they form part of a DCO application are now classified as associated development rather than a separate NSIP. The Infrastructure Planning (Electricity Storage Facilities) Order 2020 amended section 15 of the 2008 Act to include section 15(3C) which carves out of the NSIP definition any energy generating capacity provided by the storage facility and states that this capacity is to be disregarded when considering whether a generating station has a proposed capacity of over 50 MW.

2.4.5 Work No. 2 has a direct relationship with Work No.1 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 and the export of electricity to the national grid. 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.

2.4.6 The description of Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is considered that imposing an upper limit is neither desirable or necessary. The DCO includes reference to the means by which the parameters of the Scheme will be constrained (for example, the area in which Work No. 1 is to be located is clearly identified on the Works Plans and the Order will require those works to be constructed only in those areas) and it is on this basis which the EIA has been undertaken, as is set out in the Environmental Statement. There is no reason to limit the electrical output of the generating station that



is part of the Scheme provided those parameters are adequately captured in the Order. Based on the extensive pre-application consultation undertaken, which is explained in detail in the Consultation Report, the Applicant is confident that those parameters are adequately secured in the Order.

2.4.7 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Scheme within the assessed parameters, but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources, which is explained further in the Statement of Need. This approach taken has precedent in the **Cleve Hill Solar Park Order 2020**.

2.4.8 The description of Work No. 2 refers to an upper limit on the capacity of the energy storage facility that development consent is being sought for. This restricts the Applicant from developing a battery storage facility that has a capacity greater than 500 MW of power at the point of the grid connection, which is the maximum capacity of the connection of the Scheme into the national grid at the Existing Substation under the terms of the grid connection agreement the Applicant has entered into with National Grid Electricity Transmission.

## 2.5 Phasing

2.5.1 The Applicant requires flexibility to construct the Scheme in phases. Requirement 3 in Schedule 2 of the Order allows for phasing of the Scheme, by way of allowing phased discharge of the requirements.

## 2.6 Parameters of the Order

2.6.1 The design parameters of the Scheme are set out in the Design Principles. These Design Principles are the basis on which the assessment set out in the Environmental Statement has been undertaken. The Design Principles capture the important parameters that are necessary to ensure that the Scheme is constructed in such a way that the impacts and effects would not exceed the likely worst-case scenario assessed in the Environmental Statement.

2.6.2 The detailed design of the Scheme in accordance with the Design Principles is secured in requirement 6 of the Order. This approach is taken to ensure suitable flexibility in the design of the Scheme, such that new technology can be used, while ensuring that the development will always comply with the Environmental Statement. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in the Planning Inspectorate's Advice Note 9: Rochdale Envelope (July 2018).

2.6.3 Solar PV and battery energy storage systems are rapidly evolving and as a result the Order and Works Plans propose a degree of flexibility to allow the latest technology to be utilised at the time of construction. The Order and Works Plans also allow for a flexible use of space within the Sites both in terms of the type of activity that can be undertaken in a given area and in temporal terms. The flexibility sought, and how this has been accounted for in the assessment in the Environmental Statement, is set out in the table below.

Flexibility Sought	Assessment Approach
<p>Areas of land will be able to be used as each, or a combination of, solar PV (Work No. 1), battery energy storage system (Work No. 2), on-site substation (Work No. 3) and/or in some instances, as an operational compound (Work No. 8)</p>	<p>Where this flexibility is sought on the Works Plans, the assessments have all taken a consistent worst case approach of assuming the maximum spatial parameters for these infrastructure elements set out in the Works Plans, Chapter 3 of the Environmental Statement and the Design Principles, with a massing of the battery energy storage system, and one substation, within these areas assumed as the worst case for all disciplines.</p> <p>Where necessary, the office compound use has also been considered where it would lead to specific effects were that use to be in place instead of other infrastructure.</p>
<p>Land used for temporary construction compounds during construction, including the construction car park within Sunnica West Site A (Work No. 7) will be able to be used as solar PV once its construction use is completed.</p>	<p>The temporary use during construction is assessed as part of the construction phase assessment. Solar PV panels have been assumed to be in place at these locations in the operational assessments.</p>
<p>In Sunnica East Site B, the construction car park will be able to be used as solar PV (Work No. 1), battery energy storage system (Work No. 2), and/or on-site substation (Work No. 3) once its construction use is completed.</p>	<p>The temporary use during construction is assessed as part of the construction phase assessment. The operational assessments have assumed the worst case operational use of a massing of the battery energy storage system and one substation, within the maximum spatial parameters for this infrastructure element set out in the Works Plans, Chapter 3 of the Environmental Statement and the Design Principles.</p>
<p>Cabling will be able to take place across the Scheme Sites, including underneath landscaping (Work No. 6) and other construction and operational areas (Work Nos 1-3, 7-8) and in Sunnica East B, under grassland to be used as a stone curlew reserve (Work 10)</p>	<p>Underground works have been assumed in all areas where this is permitted on the Works Plans and above ground works have been assumed in all areas where they are permitted on the Works Plans.</p>

2.6.4 Given the flexibility applied for and in order to ensure a robust assessment of the likely significant environmental effects of the Scheme, the Environmental Impact Assessment (EIA) has been undertaken adopting the principles of the 'Rochdale

Envelope' where appropriate, as described in the Planning Inspectorate Advice Note 9. This involves assessing the maximum (and where relevant, minimum) parameters for the Scheme where flexibility needs to be retained, as set out above. Where specific elements of flexibility have needed to be considered by a technical discipline in the context of the parameters set out in Chapter 3 of the Environmental Statement, this has been confirmed within the relevant topic chapters of this Environmental Statement. This approach sets worst case parameters for the purpose of the assessment but does not constrain the Scheme from being built in a manner that would lead to lower environmental impacts. The Order secures the likely worst case parameters, providing certainty that the impacts of the Scheme will be no worse than those assessed as part of this environmental assessment.

### 3 THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

3.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each article of, and Schedule to, the Order is required for the Scheme.

3.1.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the “**model provisions**”). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions.

3.1.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Scheme. This reflects the integrated consenting objective of the 2008 Act regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the 2008 Act, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152 so far as these are relevant to the Scheme.

3.1.4 The provisions contained in the Order are briefly described below and then considered in more detail in the following sections:-

- a. **Part 1 (Preliminary): Article 1** sets out what the Order may be cited as and when it comes into force. **Article 2** sets out the meaning of the defined terms used in the Order;
- b. **Part 2 (Principal Powers): Articles 3 to 5** provide development consent for the Scheme, and allow it to be constructed, operated and maintained by the undertaker. **Articles 6 and 7** relate to the application and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
- c. **Part 3 (Streets): Articles 8 to 13** provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and place and retain apparatus within, streets; to alter the layout of streets, both permanently and temporarily; to construct and maintain new or altered means of access; to temporarily stop up or divert public rights of way and to enter into agreements with street authorities;
- d. **Part 4 (Supplemental Powers): Articles 14 to 17** set out four supplemental powers relating to the discharge of water; the removal of human remains; undertaking protective works to buildings and the authority to survey and investigate land;
- e. **Part 5 (Powers of Acquisition): Articles 18 to 31** provide for the undertaker to be able to compulsorily acquire the Order Land and rights over and within it, and to be able to temporarily use parts of the Order Land for the construction or maintenance of the Scheme. **Article 19** sets out a time limit for the exercise of the compulsory acquisition powers and **Article 21** provides for the undertaker to suspend or extinguish certain private rights. The provisions

provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. **Articles 27 and 28** also provide for the temporary use of land for constructing and maintaining the Scheme. **Article 29** also provides for powers in relation to the land and apparatus of statutory undertakers;

f. **Part 6 (Miscellaneous and General): Articles 32 to 46** include various general provisions in relation to the Order:-

- i. **Article 32** sets out who has the benefit of the powers contained in the Order and **Article 33** sets out how those powers can be transferred.
- ii. **Articles 34 and 35** provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";
- iii. **Articles 36 and 37** provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Scheme and in relation to trees subject to tree preservation orders;
- iv. **Articles 38 to 46** include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 12); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation, provisions relating to traffic management;; protection of Crown rights; and enforcement and modification of the Deed of Obligation.

3.1.5 There are then 14 schedules to the Order, providing for:

- a. **Schedule 1** – the description of the Scheme;
- b. **Schedule 2** - the requirements that apply to the Scheme (i.e. the controls that apply to how the Scheme is constructed, operated, maintained and decommissioned, similar to planning conditions) **Schedule 13** then contains details of the procedure for discharge of requirements and other consents, agreements or approvals required under the Order;
- c. **Schedule 3** – a list of the local legislation relating to rivers and watercourses that the Order will disapply insofar as any provisions are inconsistent with the powers contained in the Order;
- d. **Schedules 4 to 7** - matters in relation to street works and alterations, accesses and rights of way;
- e. **Schedule 8** – details of land in which only new rights may be acquired;
- f. **Schedule 9** - amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- g. **Schedule 10** – the documents and plans to be certified by the Secretary of State;
- h. **Schedule 11** - arbitration rules that apply to most arbitrations in connection with the Order;

- i. **Schedule 12** - provisions for the protection of statutory undertakers and their apparatus;
- j. **Schedule 13** – contains the procedure for discharge;
- k. **Schedule 14** – contains details of the streets subject to temporary traffic regulation measures;
- l. **Schedule 15** - contains details of trees subject to tree preservation orders that are affected by the authorised development.

## 4 PURPOSE OF THE ORDER

4.1.1 The Scheme involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant requires development consent under the 2008 Act in order to construct, maintain and operate the Scheme. Under section 37 of the 2008 Act, development consent may only be granted by a DCO, following an application to the Secretary of State.

4.1.2 The Applicant is therefore making an application to the Secretary of State for a DCO for the Scheme. In the Order, the Scheme is referred to as the “**authorised development**”. The Order refers to the person authorised to exercise the powers in the Order as the “**undertaker**” and defines the undertaker as Sunnica Limited.

4.1.3 In addition to providing for the construction, maintenance and operation of the Scheme, the Order will, in accordance with section 120(3), section 122 and Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land (including the imposition of restrictive covenants), and the extinguishment of, or interference with, interests in or rights over land.

4.1.4 The Book of Reference sets out a description of, and interests included in, the Order Land, and this is shown on the Land and Crown Land Plans. The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired (including the imposition of restrictive covenants) and what other rights and interests that will be affected. The Order and the Book of Reference should be read together with the Land and Crown Land Plans and the Statement of Reasons, which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

4.1.5 The matters for which development consent is sought are summarised in sections 4.1.7 and 4.1.8 below and described more formally in Schedule 1 to the Order.

4.1.6 Section 115(1) of the 2008 Act provides that development consent may be granted for Associated Development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the authorised development are either the NSIP or are Associated Development, in order to include them in the Order.

4.1.7 The ground mounted solar PV generating station within Work No. 1 in Schedule 1 of the Order constitutes “development for which development consent is required”, as it is defined as a NSIP, as set out at 4.1.1 above.

4.1.8 The Order also includes other development which is Associated Development, included at Work Nos. 2 to 10 of Schedule 1 of the Order. The Applicant has considered these works against the policy and criteria in the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities) 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the “**Guidance**”) - 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 of the 2008 Act.

4.1.9 The approach taken by the Applicant between those parts of the authorised development which form the NSIP and those parts that form Associated Development

follows the approach taken by other DCO applications to date, most notably the **Cleve Hill Solar Park Order 2020**, which also comprised ground mounted solar PV panel arrays, a battery energy storage system and ancillary development (although it should be noted that at the time the Cleve Hill Solar Park Order was made, battery energy storage over 50MW was classed as a NSIP in its own right. This position has now changed, as summarised above in paragraph 2.4.4).

4.1.10 In particular, Work Nos. 2 to 10 are:

- a. all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- b. all subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
- c. not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (paragraph 5(iii));
- d. all proportionate to the nature and scale of the NSIP (paragraph 5(iv));
- e. all of a nature which is typically brought forward alongside a solar generating station (paragraph 6);
- f. all listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention:
  - i. In Annex A, "Connections to national, regional or local networks", including electricity networks and in Annex B, "underground lines", "substations", "jointing pits", and "control buildings" would include the electrical compounds and grid connection works (Work Nos. 2, 3 and 4 );
  - ii. In Annex A, "Formation of new or improved vehicular or pedestrian access, whether temporary or permanent", "Alteration or construction of roads, footpaths" "Parking spaces for workers" and "lay down areas" (Work Nos. 3, 4, 7, 8 and 9);
  - iii. In Annex A, "Creation of compensatory habitat" would include the stone curlew reserve (Work No. 10);
  - iv. In Annex A, Hard and soft landscaping would include landscaping and other works to mitigate adverse impacts (Work Nos. 6 and 10); and
  - v. In Annex A, "Security measures" and " Working sites, site offices and laydown areas" (Work Nos. 4, 7 and 8).

4.1.11 As the Order seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the Order has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the 2008 Act.

## 4.2 Compulsory Acquisition

4.2.1 In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.



4.2.2 The Book of Reference sets out a description of the land and interests in the Order split by “plots.” The plots are shown on the Land and Crown Land Plans.

4.2.3 The Order provides for the area which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and Book of Reference should be read together with the Statement of Reasons which accompanies the Application and sets out the justification for the acquisition or interference with the Order Land. Further information on the compulsory acquisition powers sought is provided below.

### **4.3 Statutory undertakers’ land and apparatus**

4.3.1 The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order Land are identified in the Book of Reference.

4.3.2 Section 127(2) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of statutory undertakers’ land to the extent that:

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

4.3.3 Section 127(5) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of a right over statutory undertakers’ land by the creation of a new right over land to the extent that:

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

4.3.4 Section 138 of the 2008 Act states that a DCO may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.

4.3.5 The Order includes protective provisions in respect of statutory undertakers (see Article 40 and Schedule 12). The Applicant has been seeking to agree the form of protective provisions with the affected undertakers and has reached agreement with all affected undertakers, save in respect of the local highway authorities. Accordingly, all protective provisions included in Schedule 12 are in agreed form save for those in Part 13 which reflect the Applicant’s preferred protective provisions in respect of the local highway authorities. Further details as to how the tests under sections 127 and 138 of the 2008 Act have been satisfied are set out in the Statement of Reasons.

## 5 PROVISIONS OF THE ORDER

5.1.1 The Order consists of 46 operative provisions, each referred to as Articles and 14 Schedules. The Articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the Article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below.

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

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

5.2.2 Article 2 (*Interpretation*) 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 that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:

- a. definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 10 to the Order;
- b. the definition of "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary, markers, transformer rectifier kiosks, electricity cables (excluding the electrical cables defined separately in Article 2), telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Riverside Energy Park Order 2020**;
- c. the definition of "authorised development" means the development and associated development described in Schedule 1 of the Order and includes development as defined in section 32 of the 2008 Act. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of Associated Development is included in the definition of "authorised development" and is described in detail in Schedule 1, as it is considered that this drafting is neater;
- d. the definition of "commence" is defined so as to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the

works identified as “permitted preliminary works”, there may be a requirement to submit details to the Relevant Planning Authority pursuant to relevant requirements in Schedule 2. Where this is the case, the requirement expressly prevents the "permitted preliminary works" from being carried out until those details have been approved.

- e. a definition of “Deed of Obligation” to identify the deed entered into by the undertaker, Cambridgeshire County Council and Suffolk County Council, to secure planning obligations.
- f. a definition of “electrical cables” has been added to define the types of cables that will be installed in respect of Works Nos 1, 2, 3 and 4. With respect to Work Nos 1, 2 and 3, “electrical cables” means 33 kilovolt cables, low voltage cables, earthing cables and optical fibre cables. With respect to Work No 4, “electrical cables” means 33 kilovolt cables, 400 kilovolt cables, earthing cables and optical fibre cables. This definition also includes data cables and auxiliary cables in respect of the listed cables and works associated with laying these cables including jointing bays, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling.
- g. a definition of "limits of deviation" has been added and operates by reference to the Works Plans. These are the areas within which the authorised development can be constructed and are required so that the design of the authorised development does not lead to effects that would exceed the worst-case scenario assessed in the Environmental Statement, see further below in relation to Article 3;
- h. a definition of "maintain" has been added to make clear what activities are authorised under Article 5 (see 5.2.10 below) during the operation of the authorised development;
  - i. The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology;
  - ii. For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
    - (1) **Maintenance and inspection:** Throughout the life of the authorised development there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to failures. It is anticipated that there will be up to 5 permanent staff onsite during the operational phase, with additional staff attending when required for

maintenance and cleaning activities, up to 20 staff per day;

- (2) **Repair / Refurbish / Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to failures, it is likely that some plant and equipment will need to be repaired or refurbished or indeed replaced;
  - (3) **Adjust and alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions;
  - (4) **Remove:** Repair, refurbish, replacement and adjustment activities will require plant, equipment and material to be removed;
  - (5) **Reconstruct:** If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;
  - (6) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part;
- i. the definition of "Order land" means the land shown on the Land and Crown Land Plans which is within the limits of land to be acquired or used and described in the Book of Reference. This land is coloured pink (land to be permanently acquired) and blue (land in which the undertaker can create and acquire new rights). In addition, the Land and Crown Land Plans show the land over which temporary possession may be taken and land that is excluded from both the Order itself and the compulsory acquisition powers in the Order.
  - j. the definition of "Order limits" means the limits shown on the Land and Crown Land Plans and Works Plans within which the authorised development may be carried out and land acquired or used;
  - k. the definition of "street works" has been amended to refer to the works listed in the street works Article (Article 8(1)) so as to ensure consistency between the powers in the Article and the definition itself; and
  - l. the "undertaker" is defined as Sunnica Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 33 (see 5.6.2 below).

5.2.3 Paragraph (2) of Article 2 has been included to reflect that "rights over land" include references to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts and incidents, including restrictive covenants. Paragraph (2) also makes it clear that references to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another.

5.2.4 Paragraphs (3) to (7) of Article 2 have been added to provide clarity (respectively) that all distances, directions and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans; as to how the word "includes" is to be construed; that any statutory body

includes that body's successor in title; and that all areas described in the Book of Reference are approximate.

5.2.5 Article 3 (*Development consent etc. granted by this 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 between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The content of the works contained within each work number is described in greater detail in sections 2.4.1 to 2.4.7 above.

5.2.6 Paragraph (2) of Article 3 requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans. This is in order to provide certainty as to what has been consented by the Order, in respect of which land areas and which has been assessed in the Environmental Statement.

5.2.7 The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the Scheme, within the set limits.

5.2.8 Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the authorised development by reference to the Works Plans, while preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement accompanying the application for development consent has assessed the authorised development within the full envelope provided by the limits of deviation, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the Environmental Statement.

5.2.9 Article 4 (*Operation of generating stations*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station.

5.2.10 Article 5 (*Power to maintain the authorised development*) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order Limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to

any materially new or materially different environmental effects to those identified in the Environmental Statement.

5.2.11 Article 6 (*Disapplication of legislation, etc.*) disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

5.2.12 Article 6 provides for the disapplication of the following specified provisions:

- a. section 23 of the Land Drainage Act 1991 – which prohibits obstruction and other works in watercourses with the consent of the appropriate Internal Drainage Board;
- b. section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
- c. byelaws made by drainage bodies under section 66 of the Land Drainage Act 1991. The authorised development engages the Swaffham Internal Drainage Board's Land Drainage Byelaws;
- d. Environment Agency byelaws made, or having effect, under paragraphs 5, 6 and 6A to Schedule 25 of the Water Resources Act 1991;
- e. Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as it requires an environmental permit for flood risk activities; and
- f. the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under Articles 27 and 28 of the Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being Articles 27 and 89. This approach has precedent and has been accepted by the Secretary of State; see for example the **Drax Power (Generating Stations) Order 2019**, the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**.

5.2.13 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency and the relevant drainage authorities (Part 5, Part 8 and Part 15 of Schedule 12 to the Order). Such matters should therefore not be the subject of

further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the authorised development.

5.2.14 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, have been secured in parallel with the negotiation of appropriate protective provisions, which ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators.

5.2.15 Article 6 also applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Paragraph (2) of Article 6 extends the exception to any trees felled as a result of the authorised development.

5.2.16 In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3, which relates to rivers and other watercourses within, and in the vicinity of, the Order Limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the Order, given that the majority of the Acts considered did not append plans making it clear the watercourses they related to. Article 6 disapplies the legislation listed in Schedule 3 in so far as any provisions are inconsistent with how the powers in the Order can be exercised.

5.2.17 Article 6(3) is included in the Order to address the overlap between the Order and an extant planning permission relating to works to, and the restoration of, Worlington Quarry (original permission ref: F/04/0227 and subsequent variations of conditions ref: F/15/1386 and ref: SCC/0273/16F). The land to which the overlap relates is coloured yellow on the Restoration Overlap Plan **[EN010106/APP/2.11]** submitted with the DCO Application. The undertaker has reviewed the permission and subsequent variations and an inconsistency is likely to arise between the Order and the planning permission in respect of conditions 44, 48 and 50. The planning permission also still technically permits mineral extraction within the overlap area identified on the Restoration Overlap Plan. Given that this permission has the potential to interfere with the authorised development, the Applicant deems it necessary to disapply the planning permission over the area identified on the Restoration Overlap Plan to the extent that there is an inconsistency between the permission and the Order.

5.2.18 Article 6(3) is included in the Order pursuant to section 120 of the 2008 Act. Section 120 provides for what may be included in an order granting development consent. The disapplication of conditions relating to the Worlington Quarry would fall within section 120(3), on the basis that it is a matter ancillary to the main development, and section 120(5)(c), which enables the Secretary of State to include any provision that appears to them to be necessary or expedient for giving full effect to the Order.

5.2.19 Article 7 (*Defence to proceedings in respect of statutory nuisance*) provides that no person 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 or 65 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, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the authorised development and for this reason it is necessary to include the Article in the Order.

### 5.3 Part 3 (Streets)

5.3.1 Article 8 (*Street works*) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. The powers conferred by Article 8 are a statutory right, rather than a licence under section 50 of the New Roads and Street Works Act 1991. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the 1991 Act to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. This is based on Article 9 of **The Immingham Open Cycle Gas Turbine Order 2020**.

5.3.2 Article 9 (*Power to alter layout, etc., of streets*) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 then sets out the alterations to streets (split into two parts showing temporary and permanent works respectively). This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street) require the consent of the street authority before they can be exercised, and this is subject to the provisions of Article 42, which seeks to ensure that the consenting process does not inappropriately delay the implementation of the authorised development. Article 9 has precedent and appears in the **Drax Power (Generating Stations) Order 2019** and the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

5.3.3 Article 10 (*Construction and maintenance of altered streets*) provides that permanent and temporary alterations to streets are to be made to an appropriate standard and maintained initially at the expense of the undertaker for at least one year. Its purpose is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance. The permanent alterations set out in Part 1 of Schedule 5 are to be maintained by the undertaker for a period of a year and thereafter are to be maintained by the highway authority. The temporary alterations set out in Part 2 of Schedule 5 are to be maintained by the undertaker for the duration of the alterations and, once restoration works are completed, for one year thereafter after which the highway authority will become responsible for the maintenance of the restored alterations. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the



street was not dangerous to traffic. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in the **Drax Power (Generating Stations) Order 2019**.

5.3.4 Article 11 (*Temporary stopping up of public rights of way*) provides for the temporary stopping up, prohibition of the use, authorisation of use, alteration or diversion, of public rights of way for the purposes of constructing or maintaining the authorised development. It is required because the undertaker will need to temporarily stop up certain public rights of way in order to construct the authorised development, including installing the electrical cables to the Existing Substation. No permanent stopping up or diversion is required. The authorisation of use of motor vehicles over public rights of way where there is no public right to use motor vehicles, for the purpose of crossing only, is necessary to enable the undertaker to access parts of the authorised development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way without having to also temporarily stop up those public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 6 to the Order and as shown on the Access and Rights of Way Plans and the Traffic Regulation Measures Plans – Temporary Road Closures. Article 11 mirrors Article 11 of the model provisions in providing that where the street is specified in a schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other streets not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 44 (see below) deals with traffic regulation more widely.

5.3.5 Article 11(5) provides that compensation is payable in respect of the loss or suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the closure of public rights of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any street temporarily stopped up as a temporary working site (which is not in the model provision). Similar wording has been used in other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, Article 12 of the **Meaford Gas Fired Generating Station Order 2016** and Article 13 of the **Riverside Energy Park Order 2020**. Paragraph (8) requires the undertaker to restore any public right of way that has been temporarily altered under the Order to the reasonable satisfaction of the street authority.

5.3.6 Article 12 (*Access to works*) is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 7 to the Order. This article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 7 is split into Part 1 (permanent means of access) and Part 2 (temporary means of access). The Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the Relevant Planning Authority, in consultation with the highway authority.

5.3.7 Article 13 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets, stopping up,

prohibition, restriction, alteration or diversion of any street, works authorised under Articles 8 (*street works*), 9 (*power to alter layout, etc of streets*) and 10 (*construction and maintenance of altered streets*) of the Order and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development. This provision has precedent in the **Riverside Energy Park Order 2020** and is required so that the undertaker may enter into agreements with the relevant street authorities.

## 5.4 Part 4 (Supplemental Powers)

5.4.1 Article 14 (*Discharge of water*) is a model provision that allows 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 and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 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. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to the Swaffham Internal Drainage Board, these provisions are disapplied as sufficiently detailed provision is made in the protective provisions that have been agreed with the Board (see Part 8 of Schedule 12).

5.4.2 Article 15 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order Land and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This Article has been included because the undertaker's environmental surveys indicate that there is potential for archaeological findings within the Order Land and therefore the undertaker is not able to rule out the presence of any human remains, meaning that a clear statutory authority for removing any human remains that may be discovered is required. This provision is considered necessary so that the discovery of any remains does not delay the implementation of the authorised development.

5.4.3 The undertaker is required to publish a notice of intended removal of human remains from the Order Land and follow the procedure set out in Article 15(3)-(10). However, Article 15(11) provides that no such notice is required where the undertaker is satisfied that the remains were interred more than 100 years ago and no relative or personal representative of the deceased is likely to object to their removal.

5.4.4 Article 16 (*Protective work to buildings*) is a model provision which is included in most made DCOs to date. Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Limits, subject to a number of conditions including the service of 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a

counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.

5.4.5 Protective works can also be undertaken after the carrying out of the works forming part of the authorised development for a period of 5 years from the date of final commissioning of the phase of the authorised development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase ‘open for use’ which is used in the model provision is not appropriate. A definition of “building” has also been included within the Article for clarity. This Article is required because there are buildings within, and in close proximity to, the Order Limits that might feasibly require surveys and protective works as a result of the authorised development.

5.4.6 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of that part of the development being completed).

5.4.7 Article 17 (*Authority to survey and investigate the land*) is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the authorised development for the purpose of carrying out monitoring or survey, including placing equipment and welfare facilities on the land and making trial holes or trenches. The power is subject to a number of conditions, including a requirement for the service of 14 days’ notice on every owner and occupier of the land, the requirement to remove equipment following completion of any survey and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers’ apparatus.

5.4.8 The model provision has been modified so that no trial holes are to be made:

- a. in land located within the highway boundary without the consent of the highway authority; or
- b. in a private street without the consent of the street authority.

5.4.9 Where consent is required, the provisions of Article 42 (*procedure in relation to certain approvals etc.*) apply, being consent not to be unreasonably withheld or delayed and the application of Schedule 13 (*procedure for discharge*) which applies a period of 56 days for the relevant authority to make a decision and, if no decision is made, it is deemed to have been given.

5.4.10 The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development, and has precedent in the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.

## 5.5 Part 5 (Powers of Acquisition)

5.5.1 Article 18 (*Compulsory acquisition of land*) is a model provision that provides for the compulsory acquisition of such land as is required for the authorised development, or to facilitate, or is incidental to, the authorised development. The Article

is necessary to secure the delivery of the authorised development as set out in more detail in the Statement of Reasons accompanying the application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 21 (*Private rights*). Similarly, Article 20 (*Compulsory acquisition of rights*) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the authorised development. This approach has precedent in the **Riverside Energy Park Order 2020** and the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.

5.5.2 Article 18(2) makes clear that the powers of compulsory acquisition are subject to paragraph 2 of Article 20 (*Compulsory acquisition of rights*), Article 27 (*Temporary use of land for constructing the authorised development*) and Article 45 (*Crown rights*), to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.

5.5.3 Article 19 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 to the Order and has precedent in the majority of made DCOs to date.

5.5.4 Article 20 (*Compulsory acquisition of rights*) enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 18 (*Compulsory acquisition of land*). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence.

5.5.5 The Article provides that, in respect of the Order Land set out in Schedule 8, the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights is required in order that the undertaker can construct the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 8 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.

5.5.6 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenants for the purpose of diverting, replacing the protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.

5.5.7 This Article is a departure from the model provisions, but it has precedent in many DCOs including the **East Anglia Three Offshore Wind Farm Order 2017**, the **Cleve Hill Solar Park Order 2020** and the **Riverside Energy Park Order 2020**.

5.5.8 Article 21 (*Private rights*) is based on a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 18 (*Compulsory acquisition of land*); (ii) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 20 (*Compulsory acquisition of rights*); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.

5.5.9 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.

5.5.10 Article 22 (*Application of the 1981 Act*) is a model provision which applies the general vesting procedures in the in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.

5.5.11 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016, which has is precedent in numerous DCOs including the **Drax Power (Generating Stations) Order 2019**.

5.5.12 Article 23 (*Acquisition of subsoil only*) is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to Article 18 or Article 20), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible the extent of interests to be acquired, thereby reducing the impact on landowners.

5.5.13 Article 24 (*Power to override easements and other rights*) provides the undertaker with the power to override easements and other rights and reflects the terms of section 120(3) and (4) and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 24 of the **Silvertown Tunnel Order 2018** and Article 27 of the **Riverside Energy Park Order 2020**. The Article is supplementary to Article 18 (*Compulsory acquisition of land*) and Article 20 (*Compulsory acquisition of rights*) and is considered necessary and expedient to give full effect to development consent under Article 3. The Article makes it clear that any "authorised activity", as defined in paragraph (2), is authorised notwithstanding that it may interfere with any easement, liberty, privilege, right or advantage annexed to land

and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. Paragraph (4) provides that compensation is payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

5.5.14 Article 25 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Article 16 (*Protective work to buildings*) Article 27 (*Temporary use of land for constructing the authorised development*) or Article 28 (*Temporary use of land for maintaining the authorised development*). These modifications have precedent in numerous made DCOs and other legislation including Schedule 14 to the **High Speed Rail (London - West Midlands) Act 2017**, the **Wrexham Gas Fired Generating Station Order 2017** and the **Silvertown Tunnel Order 2018**.

5.5.15 Article 26 (*Rights under or over streets*) is a model provision which has been included in the majority of made DCOs to date which enables the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.

5.5.16 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.

5.5.17 Article 27 (*Temporary use of land for constructing the authorised development*) is a model provision which enables the undertaker to enter onto and take temporary possession of any of the Order Land, where no notice of entry or general vesting declaration has been served. Temporary use of land is required for the construction of the authorised development as it will enable the undertaker to carry out micro siting, such as for the electrical cables to the Existing Substation, which will then inform the precise permanent easement that the undertaker requires, thereby reducing compulsory acquisition powers.

5.5.18 Article 27(1)(a) is a land power that sets out that the undertaker may temporarily possess for the purposes of constructing the authorised development (i) plot 21-04 for the purposes of carrying out works to enable the passage of abnormal indivisible loads and for the passage of such loads or (ii) any other Order land prior to the exercise of the power to compulsorily acquire, or acquire rights over, that Order land.

5.5.19 Article 27(1)(b) to (e) are land powers that set out various activities that can be undertaken on the Order Land through temporary possession. This list has been modified from the model provisions to stipulate project specific activities, such as use of

the land for temporary working sites and accesses, and to carry out any mitigation works required pursuant to the requirements in Schedule 2 of the Order.

5.5.20 Article 27 also sets out limitations on this general power to temporarily use the Order Land for carrying out the authorised development. Under paragraph (2) the undertaker cannot take temporary possession of any house, garden or other occupied building. In addition, the undertaker must:

- a. serve notice of intended entry not less than 14 days before intended entry onto the land (paragraph (3));
- b. not remain in temporary possession of the land for any longer than required and not for more than one year after the date of final commissioning of the phase of the authorised development for which the land was temporarily possessed unless the undertaker has already served a notice to treat or general vesting declaration (paragraph (4));
- c. before giving up occupation of land, remove the temporary works and restore the land to the reasonable satisfaction of the owner. The model provision has been modified to specify certain operations that are not required to be removed. This approach is specific to the authorised development and is necessitated by the authorised development (paragraph (5)); and
- d. not compulsorily acquire, compulsorily acquire rights over, the land referred to in paragraph (1)(a)(i) (i.e. plot 21-04).

5.5.21 Compensation provisions are included at paragraphs (7) to (9) to compensate owners and occupiers that suffer loss or damage as a result of their land being temporarily used for carrying out the authorised development. Paragraph (13) requires the undertaker to take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017, or any successor acts and regulations, when exercising the power under Article 27(1)(b) to enter on and take temporary possession of land for the removal of vegetation. This provision was requested by the local authorities in their joint response to the Examining Authority's first written questions [REP3A-049]. It also has precedent in Article 39 to the [\*\*A47 Wansford to Sutton Development Consent Order 2023\*\*](#) and also in the [\*\*A417 Missing Link Development Consent Order 2022\*\*](#) and [\*\*A47/A11 Thickthorn Junction Development Consent Order 2022\*\*](#).

5.5.22 The Article is a departure from the model provisions, but has precedent in a number of made DCOs see for example the **Millbrook Gas Fired Generating Station Order 2019** and **Cleve Hill Solar Park Order 2020**.

5.5.23 Article 28 (*Temporary use of land for maintaining the authorised development*) is similar to Article 27 and provides for the temporary use of the Order Land for maintenance of the authorised development during the "maintenance period". The Article is a model provision and it is required so that the undertaker can take temporary possession of land within the Order Land if it is reasonably required to maintain the authorised development. The Article also allows temporary works and buildings to be constructed if reasonably necessary. It is considered appropriate as it would impose a lesser burden than acquiring rights to achieve the same purpose. The power is appropriately limited and cannot be exercised in respect of a house, garden or any other building where it is occupied.

5.5.24 The definition of “maintenance period” is set out in paragraph (11) and means a period of five years beginning with the date of final commissioning of the phase of the authorised development for which temporary possession is required under the Article. This excludes landscaping works, for which “the maintenance period” is set out in the landscape and ecology management plan. This is in order that the undertaker can carry out the landscaping commitments set out in the landscape and ecology management plan, approved pursuant to requirement 8. This wording has precedent in the **Millbrook Gas Fired Generating Station Order 2019**.

5.5.25 There are several provisions that apply, which are similar to the provisions in Article 27 (*Temporary use of land for constructing the authorised development*):

- a. The undertaker must provide at least 28 days’ notice to the relevant owner/occupiers’ before taking temporary possession (paragraph (3));
- b. The undertaker may only retain possession for as long as is reasonably necessary to carry out the maintenance (paragraph (4));
- c. When returning the land after the temporary possession the undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners (paragraph (5));
- d. Compensation provisions are included to compensate owners and occupiers that suffer loss as a result of their land being temporarily used for the maintenance of the authorised development (paragraphs (6) to (8)).

5.5.26 Article 29 (*Statutory undertakers*) is a model provision subject to some amendments which provides the undertaker with a statutory authority to compulsorily acquire land or new rights or impose restrictive covenants over land belonging to statutory undertakers which is identified in the Land and Crown Land Plans and described in the Book of Reference. The Article includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This Article is subject to the protective provisions (see Article 40 below) included at Schedule 12 of the Order. The power is required over the whole of the Order Land and similar wording has been used in numerous made Orders, including the **Cleve Hill Solar Park Order 2020**. This Article is required because it is impracticable to show and describe all apparatus within the Order Land and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order Land is required.

5.5.27 Article 30 (*Apparatus and rights of statutory undertakers in stopped up streets*) governs what happens to statutory utilities’ apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 12.

5.5.28 Article 31 (*Recovery of costs of new connections*) is a model provision which provides that persons who have to create a new connection following the exercise of powers under Article 29 (*Statutory undertakers*), for example in a situation where there is an interruption to the service provided by a statutory undertaker to owners or occupiers of premises (such as the provision of gas, water or electricity), their costs incurred in obtaining a new service can be recovered from the undertaker.



## 5.6 Part 6 (Miscellaneous and General)

5.6.1 Article 32 (*Benefit of the Order*) 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 nature of the authorised development and the fact that powers of compulsory acquisition are sought, 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 **Drax Power (Generating Stations) Order 2019** and **Cleve Hill Solar Park Order 2020**.

5.6.2 Article 33 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where the transferee or lessee is:

- a. the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
- b. where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. Article 33(2) has been amended from the model provisions so that it refers to 'transfer, or grant', which is considered to be more accurate than 'agreement'.

5.6.3 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The provision that the undertaker is able to transfer the Order to a holding company or subsidiary is to allow commercial flexibility for the undertaker in the event that it would be preferable that a connected corporate entity takes the benefit of all or part of the Order. Article 33(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 33(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017**.

5.6.4 Article 33(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:

- a. the transferred benefit will include any rights that are conferred and any obligations that are imposed;
- b. the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
- c. the benefits or rights conferred under paragraph (1) of the Article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.

5.6.5 This approach has precedent in the **Cleve Hill Solar Park Order 2020**.

5.6.6 Article 33(9) provides that the undertaker must notify the two County Councils both 14 working days before and after transferring or granting a benefit pursuant to subparagraph (1). This provision has been requested by, and agreed with, the County Councils.

5.6.7 Articles 33(10) and (11) relate to the Deed of Obligation and have been agreed with the County Councils. Article 33(10) provides that the undertaker's obligations under the Deed of Obligation will be automatically enforceable against any person to whom the power to construct or operate any of numbered works 1 and 2 has been transferred or granted under Article 33 for so long as they benefit from such power.

5.6.8 Article 33(11) provides that the obligations of parties to the Deed of Obligation other than the undertaker are automatically enforceable by any person to whom the power to construct or operate any of numbered works 1 and 2 has been transferred under Article 33 for so long as they benefit from such power.

5.6.9 This approach has precedent in Article 9 of **The Sizewell C (Nuclear Generating Station) Order 2022**. The Sizewell Order included a deed of obligation Article, as a new legal mechanism to give effect to the legal agreement, the effect of which was that the planning obligations (and in that case, other obligations beyond the scope of section 106 of the Town and Country Planning Act 1990) were enforceable against the undertaker rather than running with the land as they would have done had it been made pursuant to section 106 of the 1990 Act. The same approach was suggested by Suffolk County Council and adopted by the undertaker in the case of the Proposed Scheme. The effect of Articles 33(10) and (11) (see Articles 9(7) and (8) in the Sizewell Order) is that the Deed of Obligation is also enforceable against transferees of the powers to construct or operate any part of Work Nos. 1 and 2. In this way the Deed of Obligation and the obligations on the undertaker contained in it, run with the benefit of Work Nos. 1 and 2, rather than with the land.

5.6.10 Article 34 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole 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. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the authorised development.

5.6.11 Article 35 (*Operational land for purposes of the 1990 Act*) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.

5.6.12 Article 36 (*Felling or lopping of trees and removal of hedgerows*) is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development; constituting a danger for persons using the

authorised development or obstructing or interfering with the passage of construction vehicles. The Article also allows the undertaker to remove any hedgerows within the Order Limits that may be required for the purposes of constructing the authorised development. The Article provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited.

5.6.13 Article 36 does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order (“TPO”), but it is subject to Article 37 (*Trees subject to tree preservation orders*). Article 37 provides that the undertaker may fell or lop or cut back the roots of any tree described in Schedule 15 (trees subject to tree preservation orders) and shown on the tree preservation order trees location plan to prevent it obstructing or interfering with the construction of the authorised development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. The Article is a model provision included in numerous made DCOs, save for that it has been limited in the Order to the construction of the authorised development only and to those trees identified on the plan. . This approach has precedent in the **Cleve Hill Solar Park Order 2020**.

5.6.14 Article 38 (*Certification of plans and documents, etc.*) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the Book of Reference, plans and Environmental Statement) to the Secretary of State so that they can be certified as being true copies. The Article refers to Schedule 10, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 10 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.

5.6.15 Article 39 (*Arbitration*) is an arbitration provision and it is a departure from the model provisions. This drafting, and that in the associated Schedule 11, has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**, amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.

5.6.16 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.

5.6.17 It applies Schedule 11 of the Order, which sets out further detail of the arbitration process. The detail of Schedule 11 is set out at 6.11 below.

5.6.18 Article 40 (*Protective Provisions*) provides for Schedule 12, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail at 6.12 below.

5.6.19 Article 41 (*Service of notices*) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and numerous made DCOs.

5.6.20 Article 42 (*Procedure in relation to certain approvals etc.*) provides that Schedule 13 is to have effect in relation to all consents, agreements or approvals contemplated by any provision of the Order (other than the provisions in Schedule 12 (*protective provisions*)), and that any such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed by the relevant authority or body. This is considered necessary in order that receipt of a consent required from a third party cannot unnecessarily delay implementation of the authorised development. Applying this provision to all consents, agreements or approvals is intended to provide consistency.

5.6.21 Article 43 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under Articles 18, 20, 21, 23, 24, 26, 27, 28 and 29 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the **Wrexham Gas Fired Generating Station Order 2017** and the **Drax Power (Generating Stations) Order 2019**.

5.6.22 Article 44 (*Traffic regulation measures*) provides the undertaker with powers to regulate temporarily traffic on the roads and to the extent specified in Schedule 14. The article provides specific powers in paragraph (1) that, subject to the consent of the traffic authority in whose area the road is situated in, relate to the extents of the roads specified in Schedule 14. Part 1 of that Schedule specifies the extents of roads that would be subject to temporary speed limits, Part 2 specifies a no right turn prohibition in relation to one temporary access to the authorised development, Part 3 specifies the roads that are to be temporarily closed to traffic. Paragraph (2) enables the undertaker to, subject to the consent of the traffic authority in whose area the road is situated, place temporary traffic signals in the locations specified in Part 4 of Schedule 14. All of these specific measures are required to safely regulate traffic during construction of the authorised development. The temporary traffic regulation measures are shown on the Traffic Regulation Measures Plans – Temporary Road Closures and the Traffic Regulation Measures Plans – Temporary Measures. Prior to the application for the consent of the traffic authority under paragraphs (1) and (2) the undertaker must first carry out 21 days consultation with affected highway users. The undertaker must include a consultation report presenting the results of that consultation as part of its application for consent. Paragraph (3) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over

the life time of the authorised development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the authorised development for the undertaker to put in place some temporary restrictions on road usage. For example, similar provision is contained within the **Network Rail (Norton Bridge Area Improvements) Order 2014**, **National Grid (Hinkley Point C Connection Project) Order 2016** and more recently in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

5.6.23 Article 45 (*Crown rights*) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the Order land. This Article is not a model provision but has precedent in numerous DCOs including in Article 41 of **The Hornsea Three Offshore Wind Farm Order 2020**. Article 18 (*Compulsory acquisition of land*) and Article 20 (*Compulsory acquisition of rights*) include express provision confirming that the powers contained therein are subject to Article 45. The intention of the Article is to protect the Crown in respect of its land and interests, both when it holds the land or where it is held by another person (such as a government department).

5.6.24 Article 46 (*Enforcement, modification and discharge of the Deed of Obligation*) includes supplementary provisions relating to the Deed of Obligation. Article 46(1) provides that restrictions or requirements imposed under the Deed of Obligation may be enforced by injunction. This provides the means of enforcing the Deed of Obligation, that would ordinarily be available pursuant to section 106 of the Town and Country Planning Act 1990, had the agreement been entered into under that Act. The same approach has been taken in Article 10 of **The Sizewell C (Nuclear Generating Station) Order 2022**. In the Sizewell Order other enforcement powers were included in Article 10 from section 106 of the 1990 Act, however, these were not considered appropriate in the case of the Proposed Scheme given the nature of the obligations secured in the Deed of Obligation, being largely payment of financial contributions.

5.6.25 Articles 46(2) to (10) relate to modification and discharge of the obligations in the Deed of Obligation, and reflect the approach taken in Article 11 of **The Sizewell C (Nuclear Generating Station) Order 2022**. This article makes provision for the Secretary of State to modify or discharge obligations in the Deed of Obligation, either by agreement or with the consent of the Secretary of State pursuant to an application by the undertaker against whom it is enforceable (Article 46(2)).

5.6.26 Article 46(3) provides that, after the expiry of five years from the date of the Deed of Obligation (reflecting the approach adopted in section 106A of the 1990 Act), the undertaker may apply to the Secretary of State to have an obligation in the Deed of Obligation modified or discharged, and must give notice of such application to Suffolk County Council and Cambridgeshire County Council.

5.6.27 Article 46(4) reflects section 106A of the 1990 Act and ensures that a party does not have obligations imposed upon it against its will. Article 46(5) provides that the Secretary of State must consult the County Councils on any application made to modify or discharge the Deed of Obligation. Article 46(5) also sets out how the Secretary of State may determine the application, and requires that notification of their determination must be given to the undertaker and County Councils within 3 months of the application.

5.6.28 Article 46(6) provides that where an obligation is determined by the Secretary of State to have effect subject to a modification, that modification shall have effect as if entered into on the date of the determination.

5.6.29 Articles 46(7) and (8) set out the administrative arrangements to be followed when an application to modify or discharge an obligation is made. Article 46(9) provides that section 84 of the Law of Property Act 1925, allowing modification of restrictive covenants affecting land, does not apply to the Deed of Obligation. Article 46(10) defines the 'undertaker' for the purpose of this Article as being the undertaker authorised to construct or operate Work Nos. 1 and 2.

5.6.30 This provision is based upon the provision for modifying or discharging planning obligations as set out in section 106A of the 1990 Act, and has precedent in **The Sizewell C (Nuclear Generating Station) Order 2022**. The drafting of this Article has been agreed with the County Councils, and constitutes a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is important and necessary to ensure the Deed of Obligation can be enforced and varied where appropriate in future.

## 6 SCHEDULES

### 6.1 Schedule 1 (Authorised Development)

6.1.1 This Schedule describes the authorised development in detail, and split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.

6.1.2 The works set out in Schedule 1 to the Order are explained in detail above at section 2.4 above.

6.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement. This is achieved through the following mechanisms in the Order:

- a. Article 3 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the Works Plans – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the Environmental Statement.
- b. In terms of the detailed design, requirement 6 of Schedule 2 (see below) prevents the undertaker from commencing any phase of the authorised development until it has obtained the approval of the Relevant Planning Authorities (or authority, as applicable) to the layout, siting, scale, ground levels, external appearance, hard surfacing materials, access, refuse or other storage units, signs and lighting, drainage, water, power and communications cables and pipelines and programme for landscaping.
- c. Requirement 6(2) requires that the details submitted must set out how the design of each phase has taken account of either the arboricultural impact assessment or updated tree surveys for locations within that phase which are not considered in the arboricultural impact assessment, where arboricultural impacts are likely. The details submitted must also accord with the Design Principles, the relevant detailed Landscape and Ecology Management Plan and the Flood Risk Assessment and requirement 6(4) requires that the details submitted for Work No. 2 must accord with the approved Battery Fire Safety Management Plan (“BFSMP”) and Appendix 16D of the Environmental Statement [REP2-264 ]. The Design Principles, Flood Risk Assessment, outline Landscape and Ecology Management Plan, arboricultural impact assessment, outline BFSMP and Environmental Statement are certified documents pursuant to Article 38 (certification of plans and documents) and Schedule 10 (documents and plans to be certified). The Design Principles contain the maximum parameters for the authorised development and are the same as those used for the assessment of effects in the Environmental Statement. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and

assessed in the Environmental Statement, recognising that the final massings may differ from (but will never be larger than) these maxima.

6.1.4 The combined effect of, and relationship between, these provisions means that the final built form of the authorised development will not give rise to environmental effects beyond those which have been assessed.

## **6.2 Schedule 2 (Requirements)**

6.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the Environmental Statement and discussions with the Relevant Planning Authorities, Relevant County Authorities or other relevant statutory consultees.

6.2.2 The requirements closely relate to the mitigation set out in the Environmental Statement and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' or 'framework' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

6.2.3 Many of the requirements require submission of details for approval by the Relevant Planning Authority (or Relevant Planning Authorities where applicable). In some instances, the Relevant County Authority (or Relevant County Authorities where applicable) is the discharging authority (or authorities). In some instances the Relevant Planning Authority or Relevant County Authority is under a duty to consult with a third party or parties in relation to the document submitted to them. This is a departure from the model provisions. Where consultation is required under the Order it is, in each case, the Relevant Planning Authority's or Relevant County Authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the Relevant Planning Authority or Relevant County Authority to consult a third party, that third party has been named within the relevant requirement.

6.2.4 Some of the requirements are drafted with a view to distinguishing between the different specific work numbers, or more generally different parts or phases of the authorised development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker which allows it to (potentially) discharge a requirement in respect of a part or phase of the authorised development and construct that element, while continuing to submit details to discharge the requirement in relation to other parts or phases. This provides an appropriate balance between development not starting until details are approved, and allowing other parts or phases of the authorised development (where details are already approved) to be constructed.

6.2.5 In the undertaker's opinion the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement; enforceable and precise in their language; and reasonable in all other respects.



6.2.6 In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan. This is subject to requirement 5, as explained below.

6.2.7 *Requirement 1 – Interpretation:* This provides certain definitions that apply to this Schedule only, rather than the Order as a whole.

6.2.8 *Requirement 2 - Commencement of the authorised development:* This requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.

6.2.9 *Requirement 3 – Phasing of the authorised development and date of final commissioning:* This requirement provides that no part of the authorised development may commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the Relevant Planning Authorities. The scheme must include a timetable for the construction of the phase or phases of the authorised development and must be implemented as approved. The scheme must be implemented as approved and the battery storage compound for each Site may not be brought into commercial use without the solar photovoltaic generating station also being brought into commercial use at the corresponding Site. The undertaker must also give notice to the Relevant Planning Authorities within seven days of the date of final commissioning (or dates of final commissioning if the authorised development is constructed in phases as approved in the written scheme) that final commissioning for the phase (if constructed in a single phase) or phases (if constructed in multiple phases) has taken place.

6.2.10 *Requirement 4 – Written approval:* This requirement provides that where any approval, agreement or confirmation is required under these requirements, then such approval, agreement or confirmation must be provided in writing.

6.2.11 *Requirement 5 – Approved details and amendments to them:* This requirement provides that where any plans, details or schemes have been approved by the Relevant Planning Authority (or authorities) or Relevant County Authority (or authorities), the undertaker may submit for approval any amendments to those plans, details or schemes and, if approved by the Relevant Planning Authority (or authorities) or Relevant County Authority (or authorities), those plans, details or schemes are to be taken to include the amendments approved by the Relevant Planning Authority (or authorities) or Relevant County Authority (or authorities). Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

6.2.12 *Requirement 6 – Detailed design approval:* This requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority (or authorities) before any phase of the authorised development can commence. This includes an obligation on the Applicant, in respect of Work No.2, Work No. 3 and Work No.8 to take into account how the external appearance has sought to consider the local landscape, or where this has not been possible, an explanation of why this has not been able to be possible. The details submitted must be in accordance with the Design Principles, the relevant detailed approved Landscape and Ecology Management Plan and the Flood Risk Assessment and that the details for Work No.2 must be in accordance with Appendix 16D of the Environmental Statement [ REP2-264] and the

approved BFSMP under Requirement 7. The authorised development must be carried out in accordance with the approved details. This is required so that the detailed design accords with the information submitted with the application for development consent.

**6.2.13 Requirement 7 – Battery fire safety management:** The requirement states that a BFSMP, substantially in accordance with the outline battery fire safety management plan, must be submitted and approved by the Relevant County Authorities before commencement of Work No. 2 of the authorised development. The BFSMP must be consulted on with the Cambridgeshire Fire and Rescue Service, the Suffolk Fire and Rescue Service and the Environment Agency and it must be implemented as approved and maintained throughout the construction and operation of the authorised development.

**6.2.14 Requirement 8 – Landscape and ecology management plan:** The requirement stipulates that no phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology management plan (which is substantially in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), such approval to be in consultation with Natural England and Historic England. The landscape ecology management plan must include details of how the plan will secure a minimum of 10% biodiversity net gain during the operation of the authorised development and how the measures set out in the plan will be managed up until the date the decommissioning and restoration plan is implemented pursuant to Requirement 22 (*Decommissioning and restoration*).

**6.2.15 Requirement 9 – Implementation and maintenance of landscaping:** This requirement provides that all landscaping works must be carried out in accordance with the landscape and ecology management plan approved under Requirement 8.

**6.2.16 Requirement 10 – Stone curlew:** This requirement provides that no part of Work No. 10 may commence until an update of the offsetting habitat provision for stone curlews specification has been submitted to and approved by both relevant planning authorities, such approval to be in consultation with Natural England. The specification so submitted and approved must be substantially in accordance with the offsetting habitat provision for stone curlew specification. No part of Work Nos. 1A, 1B, 2A, 2B, 3A, 3B, 6A, 6B, 7A, 7B, 8A and 8B can commence until the undertaker has provided the offsetting habitat provision for stone curlews in accordance with the update of the offsetting habitat provision for stone curlews specification (which is a document to be certified by the Secretary of State listed in Schedule 10). The undertaker must maintain the replacement stone curlew breeding plot, in accordance with the update of the offsetting habitat for stone curlews specification, during the construction and operation of the authorised development and during the carrying out of decommissioning works.

**6.2.17 Requirement 11 – Fencing and other means of enclosure:** As part of the detailed design approval required by Requirement 6, the undertaker is required to obtain the written approval from the Relevant Planning Authority (or authorities, as applicable) for any proposed permanent and temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for each phase prior to commencement of the phase in question of the authorised development. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any

temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used. Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase must be completed and properly maintained for the operational lifetime of the part of the authorised development enclosed by the permanent fencing, walls or other means of enclosure.

**6.2.18 Requirement 12 – Surface and foul water drainage:** This requirement provides that no phase of the authorised development may commence until details of the surface water drainage scheme (including the results of the infiltration testing) and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the Relevant County Authority (or authorities, as applicable) in consultation with the Relevant Planning Authority (or authorities, as applicable), the relevant internal drainage board, and Anglian Water (in respect of its sewerage undertaker functions). The surface water drainage strategy must be substantially in accordance with the drainage technical note and include details of bunded lagoons as required by the BFSMP approved pursuant to requirement 7.

**6.2.19 Requirement 13 – Archaeology:** This requirement stipulates that the authorised development must be carried out in accordance with the detailed archaeological mitigation strategy.

**6.2.20 Requirement 14 – Construction and environmental management plan:** Under this requirement, no phase of the authorised development may commence until a construction environmental management plan (which must substantially accord with the framework construction environmental management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the relevant highway authority, Natural England and the Environment Agency. For the purposes of this requirement, “commence” includes any permitted preliminary works comprising above ground site preparation for temporary facilities for use of contractors and site clearance (including vegetation removal, demolition of existing buildings and structures). The construction and environmental management plan must also contain a construction resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

**6.2.21 Requirement 15 – Operational environmental management plan:** This requirement provides that prior to the date of final commissioning for any phase of the authorised development an operational environmental management plan (which must substantially accord with the framework operational environmental management plan) must be submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the relevant highway authority, Natural England and the Environment Agency.

**6.2.22 Requirement 16 – Construction traffic management plan and travel plan:** This requirement provides that no phase of the authorised development may commence until a construction traffic management plan and travel plan (which must substantially accord with the framework construction traffic management plan and travel plan) has been submitted to and approved by the Relevant County Authority (or authorities, as applicable). No part of the permitted preliminary works for each phase may start until a permitted preliminary works traffic management and access plan for that phase has been submitted to and approved by the Relevant County Authority (or authorities, as

applicable). The permitted preliminary works traffic management and access plan must be implemented as approved during construction.

**6.2.23 Requirement 17 – Operational noise:** This requirement stipulates that no phase of the authorised development may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the Environmental Statement are to be complied with has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable).

**6.2.24 Requirement 18 – Ground conditions:** This requirement provides that no phase of the authorised development may commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order Limits for that phase has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The written strategy must include geo-environmental investigations. The requirement further provides that if contamination not previously identified is found to be present when constructing the authorised development, no further development (unless otherwise agreed in writing with the Relevant Planning Authority, or authorities) may be carried out on the areas on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The written strategy must contain the details set out in sub-paragraph (3) of the requirement.

**6.2.25 Requirement 19 – Water management plan:** Under this requirement, no phase of the authorised development may commence until a water management plan in relation to construction of that phase of the authorised development has been submitted to and approved by the Relevant County Authority (or authorities, as applicable), having consulted the Relevant Planning Authority (or authorities, as applicable) and the relevant internal drainage board. The water management plan must include certain details set out in the requirement and must be in place throughout the construction and operation of the authorised development.

**6.2.26 Requirement 20 – Skills, supply chain and employment:** This requirement provides that no phase of the authorised development may commence until a skills, supply chain and employment management plan in relation to that phase of the authorised development (which accords substantially with the outline skills, supply chain and employment plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities.

**6.2.27 Requirement 21 – Permissive paths:** This requirement stipulates that prior to the construction of the permissive paths, the undertaker must submit the permissive path details to the Relevant Planning Authority, including the details set out in the requirement. It provides that where a phase of the authorised development includes a permissive path or paths, the permissive path or paths must be provided and open to the public prior to the date of final commissioning in respect of that phase. The paths must be provided and maintained in accordance with the permissive path details until

the parts of the authorised development in which the permissive paths are located are decommissioned.

**6.2.28 Requirement 22 – Decommissioning and restoration:** This requirement provides that the decommissioning of the authorised development will commence no later than 40 years following the date of final commissioning of the authorised development, or no later than 6 months before the 40<sup>th</sup> anniversary of the date of final commissioning, whichever is the earlier (therefore, the time limit for each phase is 40 years from the date of final commissioning for that phase, such phase or phases to be approved in the written scheme under requirement 3). Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the Relevant Planning Authority (or authorities, as applicable) for its approval a decommissioning environmental management plan for that part which substantially accords with the framework decommissioning environmental management plan. The decommissioning environmental management plan must also contain a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials during decommissioning. Within 28 days of ceasing operations at any part of the authorised development, the undertaker must notify the Relevant Planning Authority (or authorities, as applicable) in writing of the date it ceased operations for that part.

**6.2.29 Requirement 23 – Crash site exclusion area:** This requirement provides that no part of the authorised development may take place within the crash site exclusion area, which is defined by reference to the plan certified pursuant to Article 38 (certification of plans and documents) and Schedule 10 (documents and plans to be certified). Work No. 1A must not commence until either the undertaker has confirmed to Cambridgeshire County Council that it has a licence under the Protection of Military Remains Act 1986, or no licence has been obtained under the same Act in respect of carrying out Work No. 1A. Where no licence has been obtained, then no part of the authorised development will take place within the potential expanded crash site exclusion area. The date of final commissioning of Work No. 1A must not take place until a bomber crash site interpretation scheme in accordance with sub-paragraph 5 has been submitted to and approved by Cambridgeshire County Council, in consultation with Isleham Parish Council, and the undertaker has carried out such scheme.

**6.2.30 Requirement 24 – Public rights of way:** This requirement provides that the undertaker must not exercise the powers under article 11(1) and 11(3) of the Order relating to the temporary stopping up of public rights of way until the scope of the pre-commencement condition surveys for the extent of that public right of way have been approved by the Relevant County Authority (or authorities, as applicable). The condition survey must be carried out substantially in accordance with the approved scope and the outcomes of the survey must be submitted to the Relevant County Authority (or authorities, as applicable). Sub-paragraph (3) provides that the undertaker must not exercise the powers under article 11(1) and 11(3) of the Order in relation to those public rights of way until a scope of the reinstatement plan has been agreed by the Relevant County Authority (or authorities, as applicable). This, in addition to Article 11(8) of the Order, gives the Relevant County Authorities sufficient oversight and control of the exercise of the powers under article 11(1) and 11(3) and the adequate reinstatement of any public rights of way that are temporarily stopped up.

### **6.3 Schedule 3 (Legislation to be disapplied)**

6.3.1 This Schedule lists out the legislation that the Order disapplies that relates to rivers and other watercourses in and in the vicinity of the Order Limits in so far as such legislation is in force and is incompatible with the powers contained within the Order. The footnotes in the Schedule contain information about the status of each Act, where relevant.

### **6.4 Schedule 4 (Streets subject to street works)**

6.4.1 This Schedule sets out the streets that are to be subject to street works by reference to the Access and Rights of Way Plans. The Schedule relates to Article 8 (*Street works*).

### **6.5 Schedule 5 (Alteration of streets)**

6.5.1 This Schedule sets out the streets that are to be permanently altered (Part 1) and temporarily altered (Part 2) by reference to the Access and Rights of Way Plans. This Schedule relates to Articles 9 (*Power to alter layout, etc., of streets*) and 10 (*Construction and maintenance of altered streets*) and sets out where the streets are publicly or privately maintained.

### **6.6 Schedule 6 (Public rights of way)**

6.6.1 This Schedule sets out the locations of the public rights of way to be temporarily stopped up (Part 1) and the public rights of way over which the undertaker seeks authorisation to use motor vehicles where otherwise there is no public right to do so (Part 2). It references the Access and Rights of Way Plans and the Traffic Regulation Measures Plans – Temporary Road Closures. This Schedule relates to Article 11 (*Temporary stopping up of public rights of way*).

### **6.7 Schedule 7 (Access to works)**

6.7.1 This Schedule sets out the permanent accesses (Part 1) and temporary accesses (Part 2) to the authorised development. It references the Access and Rights of Way Plans. The Schedule relates to Article 12 (*Access to works*).

### **6.8 Schedule 8 (Land in which only new rights etc. may be acquired)**

6.8.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land and Crown Land Plans and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 20 (*Compulsory acquisition of rights*).

### **6.9 Schedule 9 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

6.9.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the **Cleve Hill Solar Park Order 2020**. This has been updated to reflect any necessary changes arising as a result of the Housing and

Planning Act 2016. The Schedule relates to Article 20 (*Compulsory acquisition of rights*).

## **6.10 Schedule 10 (Documents and plans to be certified)**

6.10.1 This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 38 (*Certification of plans and documents, etc.*).

## **6.11 Schedule 11 (Arbitration rules)**

6.11.1 This Schedule relates to Article 39 (*Arbitration*). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.

6.11.2 Schedule 11 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

6.11.3 The timetable for the process is as follows:

- a. Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of case and all supporting evidence to support the claim.
- b. Within 14 days of receipt of the Claimant's statement of case and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
- c. Within 7 days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.

6.11.4 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

## **6.12 Schedule 12 (Protective provisions)**

6.12.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 40 (*Protective provisions*) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2).

6.12.2 In addition, each of Parts 3 – 9 contain provisions for the benefit of a particular body. The relevant bodies are as follows:

- a. Part 3 - for the protection of Anglian Water – inserted provisions are agreed;

- b. Part 4 – for the protection of Cadent Gas Limited – inserted provisions are agreed;
- c. Part 5 – for the protection of the Environment Agency - inserted provisions are agreed;
- d. Part 6 – for the protection of National Grid as electricity and gas undertaker - inserted provisions are agreed;
- e. Part 7 – for the protection of UK Power Networks and Eastern Power Networks PLC - inserted provisions are agreed;
- f. Part 8 – for the protection of drainage authorities - inserted provisions are agreed;
- g. Part 9 – for the protection of National Highways - inserted provisions are agreed;
- h. Part 10 – for the protection of Railway Interests (Network Rail Infrastructure Limited) - inserted provisions are agreed;
- i. Part 11 – for the protection of East of England Ambulance Service NHS Trust - inserted provisions are agreed; Part 12 – for the protection of HPUT A Limited and HPUT B Limited - inserted provisions are agreed;
- j. Part 13 – for the protection of the Relevant Local Highway Authorities – the inserted provisions are not agreed. The Applicant has inserted its proposed protective provisions which it considers adequately, and reasonably, protect the local highway authorities;
- k. Part 14 - for the protection of South Staffordshire Water PLC - inserted provisions are agreed; and
- l. Part 15 – for the protection of Suffolk County Council and Cambridgeshire County Council - inserted provisions are agreed.

### **6.13 Schedule 13 (Procedure for discharge)**

6.13.1 This Schedule provides a bespoke procedure for dealing with an application made to the relevant authority (as defined in the Schedule) for any consent, agreement or approval required or contemplated by the provisions of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances.

6.13.2 Paragraph 4 makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Paragraph 5 provides for the payment by the undertaker of fees to the relevant authority for the processing of an application for consent, agreement or approval in respect of a requirement only. The fee schedule included in paragraph 5 represents the Applicant's reasonable offer to fund the relevant authority (as defined in the Schedule) for discharging the relevant requirements in Schedule 2 of the Order. The fees are set out in categories to reflect the level of resource that will be required for dealing with an application under the different requirements in Schedule 2. This is broadly based on the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, (as amended by the 2017 Regulations) (the Fee Regulations) with amendments made to reflect the nature and scale of the Scheme as a solar generating and battery storage NSIP. Sub-paragraph 5(2) provides that where an application is not decided within the specified



period the amount paid under sub-paragraph 5(1) shall be refunded to the undertaker, which is based on the principle established in Regulation 16(2) of the Fee Regulations.

6.13.3 Schedules similar to Schedule 13 have been used in various made orders and can be seen in similar form in DCOs such as **Riverside Energy Park Order 2020**, with the drafting in Schedule 13 having regard to Advice Note 15 (July 2018). The bespoke process is required in order to ensure that applications under the Order are dealt with efficiently so that the authorised development is not held up, and to provide greater certainty with regard to the time periods involved in discharging requirements. Deemed consent of applications is required for the same reason and ensures that the projects required to meet a national need will not be held up by the discharge of requirements. The Schedule relates to Article 42 (*Procedure in relation to certain approvals etc.*), described at 5.6.20 above. The Applicant notes that there is no precedent for fees to be paid to the discharging authorities in the two other made solar DCOs, but notwithstanding this it has proposed a fair and reasonable fee schedule to assist the relevant authorities with the discharge of requirements.

## **6.14 Schedule 14 (Traffic regulation measures)**

6.14.1 This Schedule contains details of the roads that are subject to temporary traffic regulation measures pursuant to Article 44, and contains details of the nature of the measures for each affected street by reference to the Traffic Regulation Measures Plans – Temporary Measures and the Traffic Regulation Measures Plans – Temporary Road Closures. Part 1 specifies the roads that are subject to temporary speed limits, Part 2 specifies the extent of a temporary prohibition (no right turn) in relation to an access to the authorised development, Part 3 specifies the roads that are to be temporarily closed and Part 4 specifies the locations of temporary traffic signal controls.

## **6.15 Schedule 15 (Trees subject to tree preservation orders)**

6.15.1 This Schedule contains the details of the trees that are subject to tree preservation orders for the purpose of identifying where the power under Article 37(1) can be exercised in relation to construction of the authorised development. The trees identified in Schedule 15 correspond with the tree preservation order trees location plan, which is a certified document under Schedule 10 of the Order.