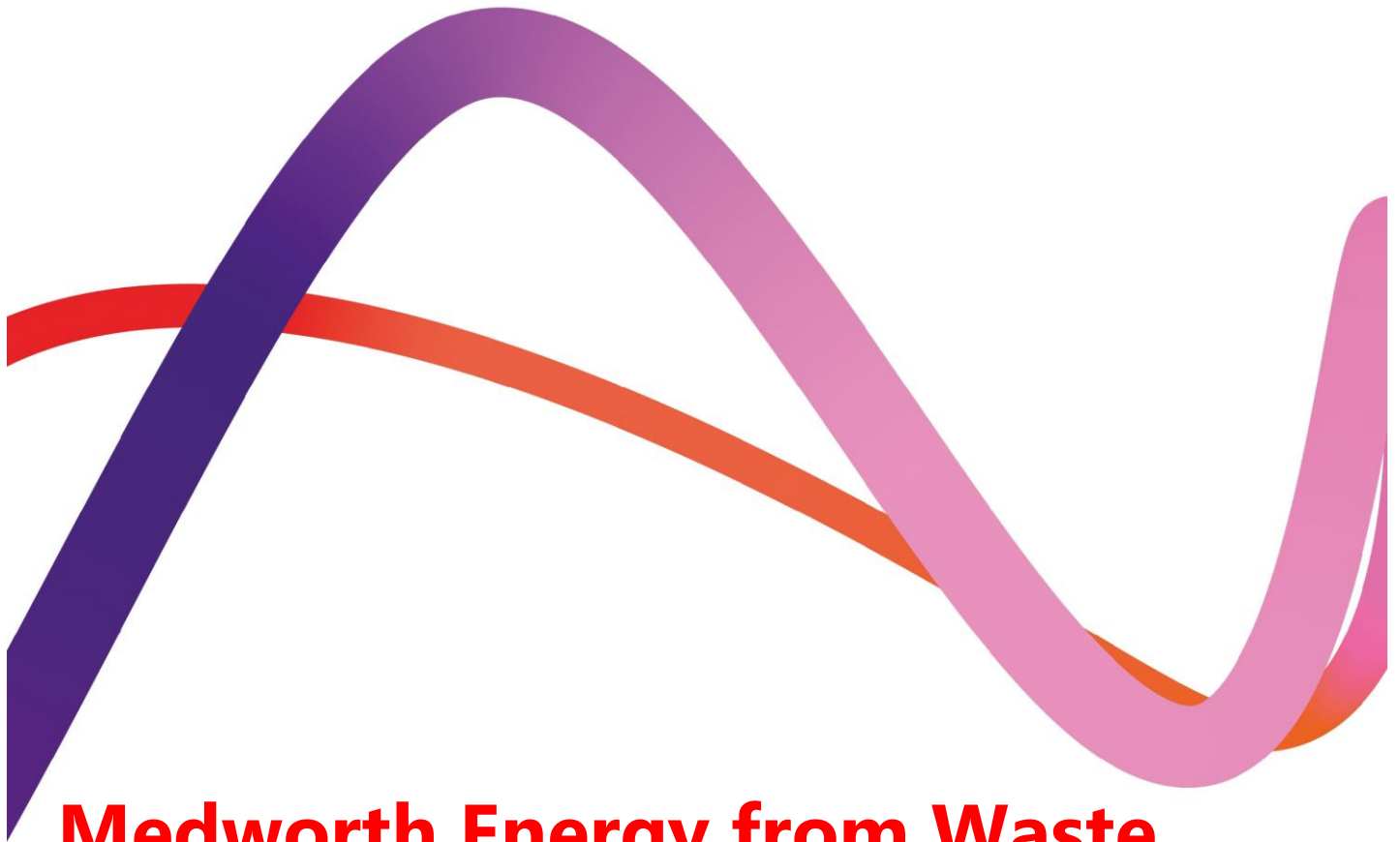


# Medworth Energy from Waste Combined Heat and Power Facility

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# Medworth Energy from Waste Combined Heat and Power Facility Order 202\*

Explanatory Memorandum

Regulation reference: The Infrastructure Planning  
(Applications: Prescribed Forms and Procedure)  
Regulations 2009 Regulation 5(2)(c)

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# 1. Explanatory Memorandum

## 1.1 Introduction

- 1.1.1 Medworth CHP Limited (the Applicant) is applying to the Secretary of State (SoS) for a Development Consent Order (DCO) to construct operate and maintain an Energy from Waste (EfW) Combined Heat and Power (CHP) Facility on the industrial estate, Algores Way, Wisbech, Cambridgeshire. Together with associated Grid Connection, CHP Connection, Access Improvements, Water Connections, and Temporary Construction Compound (TCC), these works are the Proposed Development.
- 1.1.2 The Proposed Development would recover useful energy in the form of electricity and steam from over half a million tonnes of non-recyclable (residual), non-hazardous municipal, commercial and industrial waste each year. The Proposed Development has a generating capacity of over 50 megawatts and the electricity would be exported to the grid. The Proposed Development would also have the capability to export steam and electricity to users on the surrounding industrial estate. Further information is provided in **Chapter 3: Description of the Proposed Development (Volume 6.2)**.
- 1.1.3 The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) under Part 3 Section 14 of the Planning Act 2008 (2008 Act) by virtue of the fact that the generating station is located in England and has a generating capacity of over 50 megawatts (section 15(2) of the 2008 Act). It, therefore, requires an application for a DCO to be submitted to the Planning Inspectorate (PINS) under the 2008 Act. PINS will examine the application for the Proposed Development and make a recommendation to the SoS for Energy Security and Net Zero to grant or refuse consent. On receipt of the report and recommendation from PINS, the SoS will then make the final decision on whether to grant the Medworth EfW CHP Facility DCO.
- 1.1.4 This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Medworth Energy from Waste Combined Heat and Power Facility Order 202\* (**the Draft DCO**) (**Volume 3.1**), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Draft DCO and the other documents submitted in respect of this application for the Draft DCO.
- 1.1.5 This memorandum also seeks to identify and explain any departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the model provisions). Whilst the power for the SoS to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Applicant considers it is still relevant to note and explain variations made in the Draft DCO compared to the model provisions. Where variations have been made, the Applicant has identified other made DCOs where a similar approach has been



approved by the SoS. The Applicant has sought to identify made DCOs that are comparable to the Proposed Development.

## 1.2 The purpose of the Draft DCO

- 1.2.1 In accordance with sections 120(3) and 122 of and Schedule 5 to the 2008 Act, the Draft DCO would, in addition to providing for the construction, operation, maintenance and decommissioning of the Proposed Development, authorise the acquisition of land and rights over land. **The Book of Reference (Volume 4.1)** sets out what land is to be acquired and what other rights and interests will be affected. The Draft DCO and the Book of Reference should be read together with the **Statement of Reasons (Volume 4.3)** which accompanies the application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the **Land Plans (Volume 2.2)**.
- 1.2.2 The matters for which development consent is sought under the Draft DCO can be summarised as (i) an electricity generating station, two chimneys and associated continuous emissions monitoring systems and associated development (ii) administration building (iii) combined heat and power equipment (iv) new site access and access improvements (v) temporary construction compound and laydown area (vi) potable water connection (vii) foul water connection (viii) electrical grid connection and substation, and (ix) an acoustic fence.
- 1.2.3 A more detailed, description of the various elements of the authorised development is provided in Schedule 1 to the Draft DCO (and the corresponding section of the explanatory memorandum below) and in **Chapter 3 of the Environmental Statement (Volume 6.2)** which accompanies this application.

## 1.3 Associated development

- 1.3.1 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP (a generating station) and associated development. Associated development is development associated with the NSIP as set out in section 115 of the 2008 Act, and having regard to guidance on associated development issued by the Secretary of State for Communities and Local Government (April 2013) (the Guidance). The Guidance illustrates the types of development that may qualify as associated development and sets out the defining characteristics of associated development. Associated development must not be an aim in itself. In most cases it is a type normally brought forward with the primary development, and may include measures necessary to mitigate the effects of the primary development or innovative development ideas otherwise fulfilling the principles of the Guidance. It should be proportionate to the nature and scale of the primary development.
- 1.3.2 Work Numbers 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10 of Schedule 1 to the Draft DCO contain associated development to the NSIP, being Work Numbers 1, 1A, 1B, 2, 2A and 2B. Work Numbers 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10 are all:



- directly associated with the NSIP, as they are all required for the construction, operation or maintenance of the NSIP, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
- proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and
- of a nature which is typically brought forward alongside a generating station (paragraph 6).

## 1.4 The provisions of the Draft DCO

1.4.1 The Draft DCO consists of 47 operative provisions, each referred to as articles, and 15 Schedules. The Applicant is referred to as the “undertaker” in the Draft DCO and the Proposed Development is referred to as the “authorised development” in the Draft DCO.

### Part 1 (preliminary)

## 1.5 Article 1 (citation and commencement)

1.5.1 article 1 provides for the way in which the Draft DCO should be cited and when it takes effect.

## 1.6 Article 2 (interpretation)

1.6.1 article 2 provides for the interpretation of the rest of the Draft DCO, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Draft DCO, and to add required definitions that are relevant in the context of the authorised development.

1.6.2 Definitions to note include:

- "apparatus" is defined as having the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Draft DCO this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the undertaker needs to carry out for the authorised development. Similar wording has precedent in the Riverside Energy Park Order 2020.
- “authorised development” is used and referred to throughout the Draft DCO. As there are no ancillary works included in the Draft DCO, the authorised



development is referred to as such throughout the Draft DCO and the concept within the model provisions of an “authorised project” has not been used in the Draft DCO (there are however, “ancillary matters” as defined in section 120(4) of the Planning Act 2008 including compulsory acquisition powers).

- “commence” is defined to exclude the enabling activities. This definition enables preliminary investigations and other matters required to be carried out prior to commencement under the requirements in Schedule 2. The requirements secure the mitigation required under the Environmental Statement, which in turn is only required where there are likely significant adverse environmental effects, and so by enabling works that do not give rise to such effects, the definition does not circumvent the conclusions of the Environmental Statement.
- “enabling activities” include site clearance, site mobilisation, ecological mitigation works, intrusive environmental surveys and monitoring, erection of construction welfare facilities and other works that do not give rise to any likely significant adverse environmental effects as assessed in the Environmental Statement.
- “maintain” has been added to article 2 to make clear what activities are authorised under article 3 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement.
- “Order limits” references the Order limits as shown on the Works Plans. Article 2 also defines “Order land” as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the Land Plans and described in the Book of Reference.
- “relevant planning authority” is defined as the relevant waste planning authority (being the County Council). This is a departure from the typical approach where the relevant planning authority would automatically be the district council. Under the Town and Country Planning Act 1990 regime, planning permission for waste development is a county matter.<sup>1</sup> It is therefore considered appropriate for the County Council to be responsible for the discharge of the requirements in Schedule 2 of the Draft DCO as this would be the position for a waste development under the Town and Country Planning Act 2009 regime. This point has been discussed and agreed with the relevant local authorities. This approach has precedent in waste-related DCOs, most recently in the Boston Alternative Energy Facility Order 2023.

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<sup>1</sup> Paragraph 1(1)(j) of Schedule 1 to the Town and Country Planning Act 1990 defines ‘county matter’ as including the carrying out of any operation which is a prescribed operation. The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 state that the use of land, carrying out of operations and erection of plants, wholly or mainly for the purposes of recovering, treating, storing, processing, transferring or depositing of waste, are prescribed for the purposes of paragraph 1(1)(j) of Schedule 1 to the Town and Country Planning Act 1990.



- "undertaker" is defined as Medworth CHP Limited. The "undertaker" has the benefit of the provisions of the Draft DCO, subject to the provisions of articles 7 and 8 (see below).

1.6.3 Paragraph (2) explains the definition of rights over land and clarifies the purpose of the power within the Draft DCO to impose restrictive covenants.

1.6.4 Paragraphs (3) and (4) define measurements and areas as approximate. This is required as, for example, in the Book of Reference the plot areas are given in square metres, and each measurement is rounded up to the nearest whole square.

1.6.5 Paragraph (5) ties references to numbered works to those as numbered in Schedule 1 to the Draft DCO.

1.6.6 Paragraphs (6), (7), and (8) provide additional definitions as to how references to certain words and phrases are to be interpreted.

## Part 2 (Principal Powers)

### 1.7 Article 3 (development consent granted by the Draft DCO)

1.7.1 This article grants development consent for the authorised development. Schedule 1 describes the authorised development in detail. Article 3(2) requires that the works authorised by the Draft DCO are situated within the areas shown on the **Works Plans (Volume 2.3)**. Requirement 3 in Schedule 2 and Schedule 14 of the Draft DCO provides for maximum and minimum parameters for certain key elements of the authorised development. This approach, whilst going beyond the model provisions, reflects a standard approach used in orders made under the Transport and Works Act 1992 and in recent development consent orders for energy from waste facilities, such as Riverside Energy Park Order 2020 and the Boston Alternative Energy Facility Order 2023, and is appropriate in the current Draft DCO as it serves to precisely define the authorised development by reference to the Works Plans, whilst 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 Works Plans and maximum (and minimum) parameters.

### 1.8 Article 4 (maintenance of the authorised development)

1.8.1 This article provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(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 so that it is clear what the term involves. The Environmental Statement has assessed maintenance activities as defined in the Draft DCO.





## 1.9 Article 5 (operation of the authorised development)

1.9.1 This article 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 5(2) specifically preserves the need for any other operational consent that may be needed to operate the generating station in addition to the Draft DCO.

## 1.10 Article 6 (disapplication of legislative provisions)

1.10.1 Section 120(5)(a) of the 2008 Act provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Draft DCO.

1.10.2 Under this power, article 6 provides that:

- section 24 of the Water Resources Act 1991 does not apply;
- the provisions of any bylaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991 do not apply;
- section 23 of the Land Drainage Act 1991 does not apply; and
- the provisions of any bylaws made under section 66 of the Land Drainage Act 1991 do not apply.

1.10.3 In respect of the above dis-applications, protective provisions for the benefit of the Environment Agency and Internal Drainage Boards have been included in Schedule 11 of the Draft DCO.

1.10.4 article 6 also provides for the provisions of the Neighbourhood Planning Act 2017 (insofar as they relate to temporary possession of land under articles 32 and 33 of the Draft DCO) to not apply to the authorised development. The Applicant's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date. The form of wording in this article is precedented in numerous made Orders since 2017 and has been included in article 6 of the Riverside Energy Park Order 2020 and article 40(2) of the Boston Alternative Energy Facility Order 2023.

## 1.11 Article 7 (benefit of this Order)

1.11.1 This article makes it clear that it is the undertaker who may take the benefit of the Draft DCO. The "undertaker" is defined in article 2 as Medworth CHP Limited.



- 1.11.2 article 7(2) provides that the provisions of the Draft DCO relating to Work No. 6A and 6B are for the benefit of the undertaker and Anglian Water Services Limited (Anglian Water). This is to provide Anglian Water with the benefit of the provisions of the Draft DCO in the event that Anglian Water constructs the potable water and foul water connections.
- 1.11.3 article 7(3) provides that the provisions of the Draft DCO relating to Work No. 9 are for the benefit of the undertaker and Eastern Power Networks plc (EPN). This is to provide EPN with the benefit of the provisions of the Draft DCO in the event that EPN constructs part of the substation at Walsoken.
- 1.11.4 article 7 is subject to article 8, summarised below.

## 1.12 Article 8 (consent to transfer benefit of the Draft DCO)

- 1.12.1 This article makes detailed provision for the transfer of the benefit of the Draft DCO and supplements article 7. Under article 8, the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Draft DCO, but such consent is not required where:
- the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989;
  - in relation to a transfer or lease of utility or other infrastructure connection works, the transferee or lessee is the relevant statutory undertaker or licence holder;
  - in relation to a transfer or lease of any works within a highway, the transferee or lessee is a highway authority responsible for the relevant highway; or
  - 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.
- 1.12.2 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the Applicant so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Draft DCO, or there are no outstanding actual or potential compulsory purchase claims. Article 8(5) 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 Draft DCO. Articles 8(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained article 8 of the Riverside Energy Park Order 2020, and has been amended to be consistent with the drafting of article 9 of the Boston Alternative Energy Facility Order 2023 and article 33 of the Longfield Solar Farm Order 2023.



## 1.13 Article 9 (security in respect of payment of compensation)

1.13.1 This article relates to the funding mechanism for compulsory acquisition. This requires that before the powers in articles 23, 25, 26, 27, 28, 31, 32, 33 and 34 of the Draft DCO are exercised, Medworth CHP Limited must put in place either a guarantee or an alternative form of security. Further details are provided in the **Funding Statement (Volume 4.2)**. This wording follows that used in the Riverside Energy Park Order 2020, the Longfield Solar Farm Order 2023, and the Boston Alternative Energy Facility Order 2023.

## Part 3 (Streets)

### 1.14 Article 10 (street works)

1.14.1 This article is based on a model provision intended to permit in certain streets (as specified in Schedule 3) the carrying out of street works for the purposes of the authorised development. Article 10(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to article 10(1). This provides protection for the street authority for the street in question. The effect of this provision is to give the undertaker the same powers as other statutory undertakers under the New Roads and Street Works Act 1991.

### 1.15 Article 11 (power to alter layout, etc., of streets)

1.15.1 This article allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 4 and Schedule 5. Article 11(2) allows for the alteration of the layout of any street for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority.

### 1.16 Article 12 (construction and maintenance of new or altered means of access)

1.16.1 This article provides that new or altered means of access are to be constructed to a particular standard and maintained at the expense of the undertaker for 12 months. Any part of the new or altered means of access which are proposed to be public highway (as set out on the **Access and Rights of Way (ARoW) Plan (Volume 2.4)** and described in Part 1 of Schedule 6) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private roads or accesses which the undertaker is altering or creating and as also set out in the ARoW Plan and Part 2 of Schedule 6) will then be maintained by the street authority. 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 12 of the Riverside Energy Park Order 2020, article 12 of the South Humber Bank Energy Centre Order 2021, and article 10 of the Longfield Solar Farm Order 2023.

## 1.17 Article 13 (temporary prohibition or restriction of use of streets and public rights of way)

1.17.1 This article provides for the temporary prohibition of the use, restriction of the use, alteration or diversion, of streets and public rights of way for the purposes of carrying out the authorised development. The article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets and public rights of way (set out in Schedule 7 to the Draft DCO). There are consultation requirements before this power can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Article 13(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in article 13, to use such a street as a temporary working site. Similar wording has been used in other made Orders, including article 13 of the Riverside Energy Park Order 2020, article 13 of the South Humber Bank Energy Centre Order 2021, and article 13 of the Boston Alternative Energy Facility Order 2023.

## 1.18 Article 14 (use of private roads)

1.18.1 This article authorises the temporary passage by the undertaker of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised development, without the need for the undertaker to take temporary possession of the land under article 32 of the Order. There is precedent for this article, for example in the Silvertown Tunnel Order 2018, the Port of Tilbury (Expansion) Order 2019, the Lake Lothing (Lowestoft) Third Crossing Order 2020 and the Boston Alternative Energy Facility Order 2023.

1.18.2 This provision is required to enable the construction of the authorised development to take place in the context of the private roads that exist within the Order limits (for example, part of Algores Way).

## 1.19 Article 15 (access to works)

1.19.1 This article is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 4 and Schedule 5. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development



## 1.20 Article 16 (agreements with street authorities)

1.20.1 This article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Riverside Energy Park Order 2020, the South Humber Bank Energy Centre Order 2021, and the Boston Alternative Energy Facility Order 2023.

## 1.21 Article 17 (traffic regulation measures)

1.21.1 This article allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that is necessary for the purposes of or in connection with, or in consequence of, the construction of the authorised development. The article gives effect to any permission, prohibition or restriction on stopping, parking, waiting, loading or unloading of vehicles on any road, the use of any road and the vehicular access to any road, the revocation, amendment or suspension in whole or in part any order made and other provision as to the direction or priority of vehicular traffic on any road. The article expressly provides for the alteration of the speed limit on New Bridge Lane and the placement of temporary traffic signs and signals, required during the construction of works within the public highway. The article is not in the general model provisions but there is a precedent for it in the Riverside Energy Park Order (article 17) and the Longfield Solar Farm Order 2023 (article 14).

## Part 4 Supplementary Powers

### 1.22 Article 18 (discharge of water)

1.22.1 This article is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.



### 1.23 Article 19 (authority to survey and investigate the land)

1.23.1 This article is based on the model provision which allows the undertaker to survey and investigate land including bringing equipment onto the land and making trial holes, bore holes and trenches. The power is subject to a number of conditions including a requirement for at least 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors). Article 19 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.

### 1.24 Article 20 (protective work to buildings)

1.24.1 The purpose of this article, which closely reflects the model provision, is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances. Article 20 applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused. Whilst such protective works are not currently anticipated, this article is considered appropriate in order for undertaker to undertake any protective works should they become necessary.

### 1.25 Article 21 (Felling or lopping of trees)

1.25.1 This article allows any tree or shrub within or overhanging the Order land to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused.

### 1.26 Article 22 (Removal of human remains)

1.26.1 This article is based on article 17 of the model provisions. This article has been included at the request of Fenland District Council, as the Applicant has not been able to rule out the presence of any human remains within the Order land. It is considered necessary so that there is no delay in the implementation of the authorised development. This article disapplies section 25 of the Burial Act 1857 and the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950, each being a separate regime for the handling of human remains, providing instead a single, unified regime to any human remains found during the carrying out of the authorised development.



- 1.26.2 This article departs from the Model Provision in that paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008, the M42 Junction 6 Development Consent Order 2020, and the Boston Alternative Energy Facility Order 2023.

## Part 5 (Powers of acquisition and possession of land)

### 1.27 Article 23 (compulsory acquisition of land)

- 1.27.1 This article provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 23 should be read in conjunction with Articles 27 and 28 which make consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. 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 27 (private rights). A similar approach was taken in the Riverside Energy Park Order 2020 and the Longfield Solar Farm Order 2023.
- 1.27.2 Article 23(2) makes it clear that the powers in this article are subject to the powers and restrictions in article 25 (compulsory acquisition of rights and imposition of restrictive covenants), article 26 (acquisition of subsoil only), article 32 (temporary use of land for the construction of the authorised development), and Schedule 11 (protective provisions). This ensures that, where relevant, the undertaker can acquire only new rights or can only take temporary possession of land, and cannot acquire the freehold interest in that land.

### 1.28 Article 24 (time limit for exercise of authority to acquire land compulsorily)

- 1.28.1 This article is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Draft DCO has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Draft DCO. Five years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Requirement 1 of Schedule 2 to the Draft DCO.



## 1.29 Article 25 (compulsory acquisition of rights and imposition of restrictive covenants)

1.29.1 This article is based on a model provision and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure 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) as the authorised development is implemented. The article introduces Schedule 9, which amends existing compensation legislation in the case of a compulsory acquisition under the Draft DCO of a right by the creation of a new right or the imposition of a restriction. Schedule 9 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. Wording has been included at paragraph (7) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions. The article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the dominant tenement.

## 1.30 Article 26 (acquisition of subsoil only)

1.30.1 This article permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision.

## 1.31 Article 27 (private rights)

1.31.1 This article is based on a model provision and has the effect of extinguishing or suspending private rights and restrictions over land where: (1) land is subject to compulsory acquisition, or (2) the land is subject to compulsory acquisition of rights or the imposition of restrictive covenants and the private right is inconsistent with a right being compulsorily acquired. The article also suspends private rights for as long as the undertaker is in temporary possession of land under the Draft DCO, insofar as that right is inconsistent with the exercise of temporary possession of that land. The article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or operation of the authorised development. The article follows the approach in Riverside Energy Park Order 2020 and the Longfield Solar Farm





Order 2023. Paragraph (3) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Draft DCO.

### 1.32 Article 28 (power to override easements and other rights)

1.32.1 This article provides that, by virtue of section 158 of the 2008 Act, in carrying out or using the development authorised by the Draft DCO and doing anything else authorised by the Draft DCO, the undertaker 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 use of land arising by virtue of contract. It also provides that, by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Riverside Energy Park Order 2020 and the Longfield Solar Farm Order 2023. The reference to restrictions as to use of land arising in contracts was included in the Riverside Energy Park Order 2020 and the Longfield Solar Farm Order 2023.

### 1.33 Article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)

1.33.1 This article is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 (the 1981 Act) to the exercise of powers of compulsory acquisition pursuant to the Draft DCO. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017A, the Riverside Energy Park Order 2020, the Longfield Solar Farm Order 2023 and the Boston Alternative Energy Facility Order 2023.

### 1.34 Article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)

1.34.1 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Draft DCO by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Draft DCO 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 articles 31 or 32 of this Order. Paragraph (5) clarifies that the counter-notice provisions of the Compulsory Purchase Act 1965



do not apply where the land is possessed only temporarily. This drafting is included to clarify that the term 'possess' in the 1965 Act relates only to compulsory acquisition, in order to ensure that affected landowners are not able to require the undertaker compulsorily acquire additional land when no compulsory acquisition is in effect. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017, the Riverside Energy Park Order 2020 and the Boston Alternative Energy Facility Order 2023.

### 1.35 Article 31 (rights under or over streets)

1.35.1 This article is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Riverside Energy Park Order 2020 and the Longfield Solar Farm Order 2023.

### 1.36 Article 32 (temporary use of land for the construction of the authorised development)

1.36.1 This article allows the land specified in Schedule 10 to be temporarily used for the construction of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way and provisions around giving no less than 14 days' notice and restoration of the land following the temporary works. Wording has been added to paragraph (1)(a)(ii) in order to allow article 32 to be applicable in the context of land which may be the subject of compulsory acquisition, prior to any such compulsory purchase taking place. New wording has also been added to paragraphs (3) and (4) to take into account that the undertaker may, pursuant to article 32(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. Should the undertaker compulsorily acquire the land that it is in temporary possession of, then the undertaker should remain in possession of such land. Wording has therefore been amended in paragraph (8) to dovetail with the new drafting in paragraph (1). Paragraph (1)(e) clarifies that the undertaker will be able to carry out the works authorised by the Draft DCO on land that it has taken temporary possession of. Wording has been added at paragraph (9) to make clear that the article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land. It has precedent in the Riverside Energy Park Order 2020 and the Longfield Solar Farm Order 2023.



### 1.37 Article 33 (temporary use of land for maintaining the authorised development)

1.37.1 This article provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving not less than 28 days' notice and restoration of the land following the temporary possession. This article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use, as this is more appropriate for this type of development. The drafting allows for the maintenance period to be longer should the relevant planning authority require a different period in the landscape and ecology management plan pursuant to requirement 5 in Schedule 2 of the Draft DCO. Similar wording has been used in other made Orders including Riverside Energy Park Order 2020 and the Boston Alternative Energy Facility Order 2023.

### 1.38 Article 34 (statutory undertakers)

1.38.1 This article, which is subject to Schedule 11, provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Draft DCO) rather than just extinguishment. This power is required over the whole of the Order land and similar wording has been used in made Orders for onshore generating stations, including the Riverside Energy Park Order 2020 and the Boston Alternative Energy Facility 2023.

### 1.39 Article 35 (apparatus and rights of statutory undertakers in altered or closed streets)

1.39.1 This article makes provision in respect of the apparatus and rights of statutory undertakers in streets affected by articles 10, 11, 12 and 13. It is a model provision but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 11 of the Draft DCO.

### 1.40 Article 36 (recovery of costs of new connections)

1.40.1 This article provides that persons who have to create a new connection following the exercise of powers under article 34 may recover the costs of new connections from the undertaker. It is a model provision.



## Part 6 (Miscellaneous and general)

### 1.41 Article 37 (electronic communications)

1.41.1 Article 36 sets out the position on electronic communications for the purposes of the Draft DCO.

### 1.42 Article 38 (application of landlord and tenant law)

1.42.1 This article is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole 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 there is no impediment to the construction, use or maintenance of the authorised development.

### 1.43 Article 39 (operational land for the purposes of the 1990 Act)

1.43.1 This article is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders, including the Riverside Energy Park Order 2020, the South Humber Bank Energy Centre Order 2021, the Wheelabrator Kemsley K3 Generating Station Order 2021 and the Boston Alternative Energy Facility Order 2023.

### 1.44 Article 40 (defence to proceedings in respect of statutory nuisance)

1.44.1 This article provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of fumes, gas, dust, steam, smell, accumulations or deposits which are prejudicial to health or a nuisance, artificial light, noise or any other statutory nuisances created in the course of carrying out construction, maintenance or decommissioning of the authorised development or which is an unavoidable consequence of the authorised development. It has precedent in the Longfield Solar Farm Order 2023.

### 1.45 Article 41 (protective provisions)

1.45.1 This article provides for Schedule 11, which protects the interests of certain statutory undertakers, to have effect.



### 1.46 Article 42 (certification of plans etc.)

1.46.1 This article is a model provision which provides for the submission of various document and plans (as listed in Schedule 13) to the Secretary of State in order that they may be certified as being true copies.

### 1.47 Article 43 (Service of notices)

1.47.1 This article deals with the service of notices pursuant to the Draft DCO. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and have precedent in the Longfield Solar Farm Order 2023 and the Boston Alternative Energy Facility Order 2023.

### 1.48 Article 44 (procedure in relation to certain approvals etc.)

1.48.1 This article provides a procedure in relation to consents and approvals required pursuant to the Draft DCO. It applies to all such consents etc, bar those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 12. Schedule 12 has been used in various development consent orders and can be seen in a similar form in the South Humber Bank Energy Centre Order 2021, the Wheelabrator Kemsley K3 Generating Station Order 2021 and the Longfield Solar Farm Order 2023. It also provides that the procedures set out in Schedule 12 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 to the Draft DCO.

### 1.49 Article 45 (no double recovery)

1.49.1 This is not a model provision and is based on article 44 of the model clauses for railway contained in schedule 1 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders, and the recent Boston Alternative Energy Facility Order 2023 (article 51).

1.49.2 It provides that compensation is not payable both under the Draft DCO and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.

### 1.50 Article 46 (arbitration)

1.50.1 This article is a general arbitration provision which provides that differences under the Draft DCO should be settled by arbitration unless another means of resolving a dispute is provided for in the Draft DCO. It is a model provision. In order for any



arbitration to be managed efficiently, a set of arbitration rules have been included in Schedule 15.

## 1.51 Article 47 (incorporation of the minerals code)

1.51.1 This article incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981. It has been included within the Draft DCO as mineral rights have been identified within the Order land and the mineral code provides a statutory process for dealing with the purchase of and compensation for minerals. This is based on article 19 of the Model Provisions.

## Schedules

### 1.52 Schedule 1 (authorised development)

1.52.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Draft DCO to refer to different parts of the authorised development by citing the relevant work number. The split also enables the **Draft DCO (Volume 3.1)** and **Works Plans (Volume 2.3)** to delineate the area within which each "work" can be constructed, maintained and operated (see article 3(2)). The areas within which each work can be constructed are therefore shown on the Works Plans.

1.52.2 The elements of the authorised development are:

- Work No. 1 – an electricity generating station with a gross installed generating capacity of up to 60 MW and capacity to process up to 625,600 tonnes of residual waste per annum, including:
  - ▶ fuel reception and storage facilities consisting of tipping hall, tipping bays, tipping bunker, main waste bunker, shredder, waste chutes, cranes, cabin and handling and maintenance equipment;
  - ▶ a combustion system including boiler house, air cooled moving grates, boilers and water tanks;
  - ▶ air pollution control plant and monitoring systems including silos, reactors, filter houses, fans, cabins and loading and storage areas;
  - ▶ a steam turbine and generator including turbine hall and cooling system;
  - ▶ a bottom ash handling system, including ash storage bunker, conveyors, collection bays, cranes and handling and maintenance equipment;
  - ▶ air cooled condenser;
  - ▶ compressed air system;



- ▶ tank(s) for the storage of urea;
- ▶ switch gear building;
- ▶ control room; and
- ▶ water treatment and storage plant.
- Work No. 1A – two chimneys and associated continuous emissions monitoring systems and platform.
- Work No. 1B – administration building, including:
  - ▶ roof–mounted photovoltaic solar panels to supplement energy use within the administration building, generating approximately 50kW (0.05MW) of electricity;
  - ▶ brown roof and green walls;
  - ▶ natural cooling apparatus including brise soleil to eastern elevation;
  - ▶ bat and bird boxes; and
  - ▶ rainwater harvesting apparatus.
- Work No. 2 – in connection with and in addition to Work No. 1, 1A and 1B.
- Work No 2A – being:
  - ▶ fire water tank and fire water pump cabin;
  - ▶ diesel generator and diesel storage tanks;
  - ▶ 132kV switching compound, transformers, switch gear, cabling, kiosk and associated telemetry;
  - ▶ workshop and stores; and
  - ▶ gatehouse and weighbridges.
- Work No. 2B – being:
  - ▶ vehicle layby and queuing areas;
  - ▶ laydown and maintenance areas;
  - ▶ internal access roads and pedestrian walkways;
  - ▶ parking areas and electrical vehicle charging points;
  - ▶ pipes, cables, telecommunications and other services and associated infrastructure;
  - ▶ site drainage, including works to drains and culverts, potable and wastewater services and associated infrastructure;
  - ▶ hard and soft landscaping; and



- ▶ biodiversity enhancement measures and environmental mitigation measures.
- Work No. 3 – associated development comprising combined heat and power equipment including heat exchangers, pipework, valving, pumps, pressurisation, water treatment systems and associated instrumentation and telemetry.
- Work No. 3A – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, vertical expansion loops and pipe bridges.
- Work No. 3B – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, bellows expansion connections, vertical expansion loops and pipe bridges.
- Work No. 4A – associated development comprising a new site access and access improvements on New Bridge Lane including carriageway and footway widening, highway alteration works, junction improvements including signalisation, culverts, drains, street lighting, services and utilities connections and compact substation.
- Work No. 4B – associated development comprising a new site access and access improvements Algores Way including carriageway and footway widening, highway alteration work, culverts, drains, services and utilities connections and street lighting.
- Work No. 5 – associated development being a temporary construction compound and laydown area including:
  - ▶ hard standings;
  - ▶ materials storage and laydown areas;
  - ▶ construction fabrication areas;
  - ▶ generators;
  - ▶ vehicle parking areas;
  - ▶ wheel washing facilities;
  - ▶ accommodation, office and welfare buildings;
  - ▶ new or alteration to accesses;
  - ▶ internal haul roads; and
  - ▶ temporary pedestrian bridges.
- Work No. 6A – comprising associated development for the potable water connection:





- ▶ water pipe(s) and associated instrumentation and telemetry;
- ▶ cable trenches, ducting, protection plates and jointing bays; and
- ▶ horizontal directional drilling compound.
- Work No. 6B – comprising associated development for the foul water connection:
  - ▶ water pipe(s) and associated instrumentation and telemetry; and
  - ▶ cable trenches, ducting, protection plates and jointing bays.
- Work No. 7 – comprising associated development:
  - ▶ 132kV electrical underground cables and associated instrumentation and telemetry;
  - ▶ cable trenches, ducting, protection plates and jointing bays; and
  - ▶ temporary storage compounds in laybys on the A47.
- Work No. 8 – comprising associated development:
  - ▶ 132kV electrical underground cables and associated instrumentation and telemetry;
  - ▶ cable trenches, ducting, protection plates and jointing bays; and
  - ▶ temporary storage compounds in laybys on the A47.
- Work No. 9 – comprising associated development:
  - ▶ electrical substation and compound including clean air switchgear, control room, kiosks and monitoring kiosk;
  - ▶ cables and associated instrumentation and telemetry;
  - ▶ cable trenches, ducting, protection plates and jointing bays; and
  - ▶ new or alteration to accesses, internal pedestrian and vehicular access road and parking area.
- Work No. 10 – comprising associated development, being an acoustic fence.

1.52.3 Schedule 1 is drafted so as to be non-specific as to technology and configuration of the plant.

1.52.4 The mechanics of the drafting in Schedules 1, 2 and 14 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement. This is achieved through a number of mechanisms in the Draft DCO:

- Article 3 and Schedule 1 provide the power to build the authorised development. Pursuant to article 3(2), each numbered work must be situated within the area delineated on the Works Plans. Given these overarching constraints, there is certainty as where each element can be built.



- The relevant parameters secured via requirement 3 and Schedule 14 set maximum (and where applicable, minimum) parameters for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the Environmental Statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum building dimensions have been presented and assessed in the Environmental Statement, recognising that the final building massings may differ from (but will never be materially larger than) these maxima depending on the technology provider selected.
- In terms of detailed design, requirement 2 of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of new permanent buildings and structures as listed in requirement 2 prior to commencing these works.

1.52.5 The combined effect of and relationship between these provisions, and the remainder of the requirements in Schedule 2 of the Draft DCO, ensures that the authorised development will not give rise to environmental effects beyond those which have been assessed.

## 1.53 Schedule 2 (requirements)

1.53.1 This Schedule sets out the requirements which apply to the carrying out and operation (including maintenance and decommissioning) of the authorised development under the Draft DCO. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been informed by discussions with the relevant planning authority. 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' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

1.53.2 The requirements operate by reference to different stages in the lifetime of the authorised development (or parts of it). In effect, the undertaker may not proceed to these stages until it has met its obligations under the relevant requirements.

1.53.3 *Requirement 1: Time limits* - This requirement is based upon the model provisions and requires that the authorised development must only be commenced within five years of the date on which the Draft DCO is made.

1.53.4 *Requirement 2: Detailed design approval* - This is based on a model provision. It requires the specific design details of Work Numbers 1, 1A, 1B or 9 to be submitted to and approved by the relevant planning authority before commencement of that work number, and for the authorised development to be constructed in accordance with those approved details.



- 1.53.5 *Requirement 3: Parameters of authorised development* – This requirement requires that the authorised development must not exceed the maximum and minimum dimensions as set out in Schedule 14.
- 1.53.6 *Requirement 4: Biodiversity and landscape mitigation* – This requirement requires the undertaker, prior to commencing any part of the authorised development, to submit a landscape and ecology strategy for each part of the authorised development for the approval of the relevant planning authority. The plan must be in substantial accordance with the **outline landscape and ecology strategy (Volume 6.4)**. The landscape and ecology strategy must be implemented as approved.
- 1.53.7 *Requirement 5: Landscape and ecology management plan* – This requirement requires the undertaker, prior to the date of final commissioning, to submit a landscape and ecology management plan, in substantial accordance with the **outline landscape and ecology management plan (Volume 7.7)**, for Work Numbers 1, 1A, 1B, 2A, 2B and 9 for the approval of the relevant planning authority. The landscape and ecology management plan must be implemented as approved.
- 1.53.8 *Requirement 6: Biodiversity net gain* – This requirement requires the undertaker to submit a biodiversity net gain strategy prior to the commencement of the authorised development. The strategy must include details of how it will secure a minimum of 10% biodiversity net gain. This is calculated using the biodiversity metric 3.0 or such other metric that is approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. This enables the latest biodiversity metric to be used, whilst providing flexibility to depart from this should it be agreed, i.e. where the metric is updated shortly before the submission of the biodiversity net gain strategy. It must be approved by the relevant planning authority in consultation with the relevant statutory nature conservation body, and must be implemented as approved.
- 1.53.9 *Requirement 7: Highway works* - This is a modified model provision. It provides that construction of any new permanent or temporary means of access to a highway, or alteration to an existing means of access to a highway, must not commence until an access plan for that access has been submitted to and approved by the relevant highway authority. It also requires no part of Work Numbers 4A and 4B may not commence until written details of access improvements for that Work No. have been submitted to and approved by the relevant planning authority.
- 1.53.10 *Requirement 8: Drainage strategy* - This is based on a model provision. It provides that no part of Work Numbers 1, 1A, 1B, 2A, 2B, 4A, 4B, 6A, 6B and 9 may commence until a drainage strategy, substantially in accordance with the **outline drainage strategy (Volume 6.4)**, for that Work No. has been submitted to and approved by the relevant planning authority. The relevant planning authority must consult with Anglian Water and the Environment Agency before approving any drainage strategy submitted to it, and the drainage strategy must be implemented as approved.



- 1.53.11 *Requirement 9: Contamination and groundwater* – This provides that no part of the authorised development may commence until a scheme to deal with the contamination of any land for that part (including groundwater) which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment, has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.
- 1.53.12 *Requirement 10: Construction environmental management plan* – This requirement requires a construction environmental management plan, in substantial accordance with the **outline construction environmental management plan (Volume 7.12)**, to be submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, before commencement of any part of the authorised development. All construction works must be in accordance with the approved construction environmental management plan, unless otherwise agreed with the relevant planning authority.
- 1.53.13 *Requirement 11: Construction traffic management plan* – This is a modified model provision. It requires a construction traffic management plan, in substantial accordance with the **outline construction traffic management plan (Volume 6.4)**, to be submitted to and approved by the relevant planning authority, before commencement of any part of the authorised development. The construction traffic management plan must be implemented as approved, unless otherwise agreed with the relevant planning authority.
- 1.53.14 *Requirement 12: Operational traffic management plan* – This requirement requires an operational traffic management plan, in substantial accordance with the **outline operational traffic management plan (Volume 7.15)**, to be submitted and approved by the relevant planning authority, in consultation with the highway authority, prior to the date of final commissioning. The operational traffic management plan must be implemented as approved, unless otherwise agreed with the relevant planning authority.
- 1.53.15 *Requirement 13: Flood emergency management plan* – This requirement requires a flood emergency management plan, in substantial accordance with the **outline flood emergency management plan (Volume 7.9)**, to be submitted and approved by the relevant planning authority (in consultation with the Environment Agency) prior to the date of final commissioning of Work Nos. 1, 1A, 1B, 2A, 2B and 9. The flood emergency management plan must be implemented as approved.
- 1.53.16 *Requirement 14: Waste hierarchy scheme* – Before the date of final commissioning, the undertaker must submit a waste hierarchy scheme to the relevant planning authority for approval. The relevant planning authority must consult with the Environment Agency before approving the waste hierarchy scheme. The waste hierarchy scheme sets out arrangements for maintenance of the waste hierarchy and aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period. The waste hierarchy scheme must be implemented as approved.



- 1.53.17 *Requirement 15: Operational travel plan* – Before the date of final commissioning, the undertaker must submit an operational travel plan, in substantial accordance with the **outline operational travel plan (Volume 6.4)**, to the relevant planning authority for approval. The operational travel plan is to set out the measures to encourage staff working at Work Number 1, 1A, 1B, 2A and 2B to use sustainable modes of transport. The operational travel plan must be implemented as approved.
- 1.53.18 *Requirement 16: Odour management plan* – Before the date of final commissioning of any part of Work Number 1, the undertaker must submit an odour management plan, in substantial accordance with the **outline odour management plan (Volume 7.11)**, to the relevant planning authority for approval, in consultation with the Environment Agency. The odour management plan must be implemented as approved.
- 1.53.19 *Requirement 17: Fire prevention plan* – Before the date of final commissioning of any part of Work Number 1, undertaker must submit a fire prevention plan, in substantial accordance with the **outline fire prevention plan (Volume 7.10)**, to the relevant planning authority for approval. The fire prevention plan must be implemented as approved.
- 1.53.20 *Requirement 18: Lighting Strategy* – This is based upon a model provision and requires the undertaker to submit details of artificial light emissions to the relevant planning authority for approval before the installation of any lighting for that part of the authorised development. The details must be in substantial accordance the **outline lighting strategy (Volume 6.4)**. The approved scheme must be implemented as approved.
- 1.53.21 *Requirement 19: Noise management* – Before the date of final commissioning of any part of Work Numbers 1, 1A, 2A and 2B, an operational noise management plan must be submitted to the relevant planning authority for approval. The operational noise management plan submitted for approval must be substantially in accordance with the **outline noise management plan (Volume 6.4)**. This requirement also requires residential use at plot numbers 11/4a and 11/4b described in the **Book of Reference (Volume 4.1)** to cease before any part of Work Number 4A may commence. Plot numbers 11/4a and 11/4b may not be used for residential purposes until the authorised development has been decommissioned in accordance with requirement 28. In addition, no part of Work Number 4A may commence until Work No. 10 has been constructed, which must be maintained until the authorised development has been decommissioned in accordance with requirement 28. The relevant planning authority must consult with the Environment Agency before approving the operational noise plan. These requirements are necessary to ensure the measures required to mitigate the noise impacts identified in the Environmental Statement are put in place before the impacts commence. The operational noise management plan must be implemented as approved.
- 1.53.22 *Requirement 20: Notice of start of commissioning and notice of date of full commissioning* – This is not a model provision. It requires the undertaker to give notice to the relevant planning authority of the intended commencement of



commissioning of Work Number 1 and the intended date of full commissioning of Work Number 1. This requirement assists the relevant planning authority in monitoring the requirements.

- 1.53.23 *Requirement 21: Employment and skills strategy* – This requirement requires an employment and skills strategy to be submitted to the relevant planning authority for approval prior to the commencement of the authorised development. The employment and skills strategy submitted for approval must be substantially in accordance with the **outline employment and skills strategy (Volume 7.8)**. The employment and skills strategy must be implemented as approved.
- 1.53.24 *Requirement 22: Carbon capture and export readiness reserve space* – This requirement requires the undertaker to demonstrate that Work No. 1 has been constructed in compliance with the carbon capture and export embedded design measures. This ensures that, in the event carbon capture and export becomes feasible (see requirement 23), it can be retrofitted to Work No. 1 without undue difficulty. The undertaker must not, without the consent of the SoS, dispose of the reserve space or do anything to diminish the undertaker's ability to prepare the reserve space for the installation and operation of Carbon capture and export equipment. Precedent for this approach (and that in requirement 23) is found in the Drax Power (Generating Stations) Order 2019, requirements 22 and 23, and the Thurrock Flexible Generation Plant Order 2022, requirements 20 and 21.
- 1.53.25 *Requirement 23: Carbon capture readiness monitoring report* – The undertaker is required to make a report to the SoS within 3 months of the date of full commissioning of Work No. 1A, and every two years thereafter, that sets out how the undertaker expects to comply with Requirement 22 for the following 2 years. Each report must state whether the undertaker considers that retrofitting carbon capture and export technology is feasible, the reasons for the conclusion, and whether the impediments could be overcome. It must also explain whether the undertaker has decided to seek additional regulatory clearances or modify existing clearances in respect of any carbon capture and export readiness proposals.
- 1.53.26 *Requirement 24: Community liaison manager* – Before the date of final commissioning, the undertaker must notify the relevant planning authority of the name of the community liaison manager appointed and must keep the relevant planning authority updated on any changes. The Construction and Environmental Management secured via requirement 10 requires a community liaison manager to be appointed during construction.
- 1.53.27 *Requirement 25: Combined heat and power* - This is not a model provision. It requires the undertaker to construct Work No. 1 in accordance with the combined heat and power embedded design measures. This ensures that there will be no undue impediment to the installation of Work Nos. 3, 3A or 3B when a customer for the heat and power from the authorised development has been identified. The undertaker is required to submit a CHP review to update the **Combined Heat and Power Statement (Volume 7.6)** to the relevant planning authority no later than 18 months after the date of final commissioning. A revised CHP review is required to



be submitted to the relevant planning authority five years following the submission of the last CHP review.

- 1.53.28 *Requirement 26: Air safety* – This requirement requires the undertaker to submit to the relevant planning authority and the Ministry of Defence the information required by the Defence Geographic Centre of the Ministry of Defence. At the earliest opportunity prior to the date of completion of the construction of the chimneys, the anticipated date of construction completion must be submitted to the relevant planning authority and provided in copy to the Ministry of Defence. All details submitted and approved under this requirement must be implemented as approved and maintained throughout construction and operation of the authorised development.
- 1.53.29 *Requirement 27: Local air quality monitoring strategy* – This requirement requires the undertaker to submit a local air quality monitoring strategy to the relevant planning authority for approval prior to the commencement of the authorised development. The strategy must be substantially in accordance with the **outline local air quality monitoring strategy (Volume 9.21)**, and must be implemented as approved.
- 1.53.30 *Requirement 28: Decommissioning* - This is not a model provision. Within 24 months of the permanent cessation of the commercial operation of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan for Work Nos. 1, 1A, 1B, 2A, 2B and 9, including a timetable for its implementation and a decommissioning environmental management plan. The relevant planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved. The decommissioning plan must be implemented as approved.
- 1.53.31 *Requirement 29: Origin of waste* – This requirement has been agreed with the relevant planning authority. It requires that at least 80% of the waste processed at the authorised development must originate from within waste area 2, being equivalent to the waste planning authority boundaries that form the local area (study area) for the purpose of the waste fuel availability assessment (volume 7.3). It also requires 17.5% of waste processed at the authorised development to originate from within waste area 1, being a radius of 75km from the grid location of Work No. 1. It places a limit on the tonnage of waste that may be accepted from any one waste planning authority, equivalent to 50% of the total capacity of the authorised development, to ensure that the authorised development is not monopolised and adequately serves the region in which it is located. Finally, the undertaker must maintain a written record of the quantities and origin of waste, and provide a report annually to the relevant planning authority that contains details of the waste processed at the authorised development. The purpose of this requirement is to ensure, insofar as is possible, the authorised development complies with the proximity principle that waste should be treated as close to the point of origin as is possible.
- 1.53.32 *Requirement 30: Approved details and amendments to them* – This is based on a model provision and allows the relevant planning authority to approve amendments



to certified documents, the parameters in Schedule 14 of the Draft DCO, and other details, schemes or plans already approved. This is to allow for flexibility, however this flexibility is given strict parameters in that it only applies to the extent the subject matter of the approval is unlikely to result in materially new or different effects to those assessed in the Environmental Statement. A similar Requirement appeared in the Riverside Energy Park Order 2020, the South Humber Bank Energy Centre Order 2021, the Wheelabrator Kemsley K3 Generating Station Order 2021 and the Boston Alternative Energy Facility Order 2023.

- 1.53.33 *Schedule 3 (Streets subject to street works)* sets out the streets that would be subject to street works (including reference to the relevant **Access and Rights of Way plan (Volume 2.4)**, the location and the specific street). The Schedule relates to article 10 (street works).
- 1.53.34 *Schedule 4 (Streets subject to permanent alteration of layout)* sets out the streets to be permanently altered, by reference to the **Access and Rights of Way plan (Volume 2.4)**. The Schedule relates to article 11 (power to alter layout, etc., of streets).
- 1.53.35 *Schedule 5 (Streets subject to temporary alteration of layout)* sets out the streets to be temporarily altered, by reference to the **Access and Rights of Way plan (Volume 2.4)**. The Schedule relates to article 11 (power to alter layout, etc., of streets).
- 1.53.36 *Schedule 6 (Access)* sets out (with reference to the **Access and Rights of Way plan (Volume 2.4)**) those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those works to restore temporary accesses that are to be maintained by the street authority (Part 3) which are referred to in article 12 of the Draft DCO (Construction and maintenance of new or altered means of access).
- 1.53.37 *Schedule 7 (Temporary prohibition or restriction of the use of streets or public rights of way)* sets out the streets that will be subject to temporary prohibition or restriction and the public rights of way that will be subject to temporary prohibition or restriction (including reference to the relevant **Access and Rights of Way plan (Volume 2.4)**, the location and the extent of the temporary prohibition or restriction). The Schedule relates to article 13 (temporary prohibition or restriction of use of streets and public rights of way).
- 1.53.38 *Schedule 8 (Land in which only new rights etc. may be acquired)* specifies both the areas of land in 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 Plans (Volume 2.2)**, and the nature of the rights in column 2 is explained by reference to the relevant work numbers and the corresponding **Works Plans (Volume 2.3)**. The Schedule relates to article 24 (compulsory acquisition of rights etc.).
- 1.53.39 *Schedule 9 (Modification of compensation and compulsory purchase enactments for creation of new rights)* modifies existing compensation legislation including the





Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in DCOs as made, including the Riverside Energy 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 25 (compulsory acquisition of rights etc.).

- 1.53.40 *Schedule 10 (Land of which temporary possession may be taken)* sets out the land of which only temporary possession may be taken, pursuant to article 32 and 33. This land is shown yellow on the **Land Plans (Volume 2.2)**, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding **Works Plans (Volume 2.3)**.
- 1.53.41 *Schedule 11 (protective provisions)* includes draft protective provisions for the benefit of affected statutory undertakers. The bespoke protective provisions have either been agreed by the relevant statutory undertaker or are under negotiation.
- 1.53.42 *Schedule 12 (Procedure for discharge of requirements)* provides a bespoke procedure for the discharge of requirements by the relevant planning authority. It sets out time periods within which decisions must be made, and provides for deemed approval of the requirements in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application. Schedules similar to Schedule 12 have been used in various orders and can be seen in a similar form in the Riverside Energy Park Order 2020, the Wheelabrator Kemsley K3 Generating Station Order 2021, and the Longfield Solar Farm Order 2023. The bespoke process is required in order to ensure that requirements are dealt with efficiently so that the commencement and commissioning of the authorised development is not delayed. Deemed consent of requirements is required for the same reason and ensures that the nationally-needed authorised development will not be held up by the discharge of requirements. The Schedule relates to article 44 (procedure in relation to certain approvals etc.).
- 1.53.43 *Schedule 13 (Documents and plans to be certified)* sets out all documents and plans that must be submitted to the Secretary of State under article 42 (certification of plans etc.) for certification.
- 1.53.44 *Schedule 14 (Maximum and Minimum Design Parameters)* sets out the relevant parameters for the authorised development. See the explanation provided for Schedule 1 above as to how this schedule operates alongside the relevant articles and schedules.
- 1.53.45 *Schedule 15 (Arbitration Rules)* sets out the process for arbitration as referred to in article 46. This schedule refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent. The timetable for the process is as follows:



- Within 15 working 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.
- Within 15 working 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.
- Within 5 working days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.
- The costs of the arbitration will be awarded by the arbitrator and the principle that each party will bear its own costs unless either party behaved unreasonably. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

1.53.46

The arbitration rules are not included in the Model Provisions. However, the inclusion of arbitration rules is preceded in Hornsea Project Three Offshore Wind Farm Order 2020, the Cleve Hill Solar Park Order 2020 and the Longfield Solar Farm Order 2023. 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 provision.